07-12-06

Express Mail No. **EV475142710US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Lawrence L. Kunz Peter G. Anderson (as corrected)	Confirmation No.:	1690
Serial No.:	09/910,388	Art Unit:	1653
Filed:	July 20, 2001	Examiner:	Hope A. Robinson
For:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	Attorney Docket No.:	10177-211-999 (formerly 295.003US5)

REQUEST FOR CORRECTION OF INVENTORSHIP UNDER 37 C.F.R. § 1.48(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.48(a), the assignee and all inventors of the above-identified patent application hereby petition the United States Patent and Trademark Office ("USPTO") to correct the inventorship of the above-identified patent application by *adding* ***PETER G. ANDERSON*** *as a co-inventor*.

In support thereof and pursuant to 37 C.F.R. § 1.48(a)(2), (3), and (5), the following documents are submitted herewith:

1. Statement of Dr. Peter G. Anderson stating that the inventorship error occurred without any deceptive intention on his part (Tab A);

2. A Declaration signed by the inventors Dr. Lawrence L. Kunz and Dr. Peter G. Anderson (Tab B); and

3. Statement of Assignee Boston Scientific Scimed, Inc., complying with the requirements and 37 C.F.R. § 3.73(b) and agreeing to the correction of inventorship (Tab C).

In further support thereof, Applicant submits herewith a Statement of Facts, which contents are entirely incorporated herein (Tab D).

Please charge the estimated fee of $130.00 pursuant to 37 CFR §§ 1.17(i), 1.48(a)(4) and any other fees that may be required to Jones Day LLP Deposit Account No. 50-3013. A copy of this sheet is enclosed for accounting purposes.

It is respectfully submitted that all the requirements of 37 C.F.R. §§ 1.48(a) have been met, and it is requested that the present Request adding DR. PETER G. ANDERSON as a co-inventor of the above-identified patent application be granted.

If any issues remain, the Examiner is invited to telephone the undersigned to discuss the same and to arrange for prompt and efficient handling of this matter.

Respectfully submitted,

Date July 10, 2006

Gidon D. Stern 42412

Gidon D. Stern (Reg. No. 27,469)
By: Catharina J. Chin Eng (Reg. No. 42,412)
JONES DAY LLP
222 East 41st Street
New York, NY 10017
(212) 326-3939

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STATEMENT BY INVENTOR
TO BE ADDED PURSUANT TO 37 C.F.R. § 1.48(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.48(a)(2), I, Dr. Peter G. Anderson state the following:

I have reviewed and understand the content of the Request for Correction of Inventorship Under 37 C.F.R. § 1.48(a) submitted concurrently herewith to amend the above-identified application to name the correct inventors.

I hereby state that the amendment of the inventorship to add my name is due to an error that occurred without deceptive intention on my part in the omission of my name as an inventor.

Date: 6-12-06

Dr. Peter G. Anderson

DECLARATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below at 201 et seq. beneath my name.

I believe I am the original, first and sole inventor if only one name is listed at 201 below, or an original, first and joint inventor if plural names are listed at 201 et seq. below, of the subject matter which is claimed and for which a patent is sought on the invention entitled

Therapeutic Inhibitor of Vascular Smooth Muscle Cells

and for which a patent application:

☐ is attached hereto and includes amendment(s) filed on (if applicable)
☒ was filed in the United States on July 20, 2001 as Application No. 09/910,388 (for declaration not accompanying application) with amendment(s) filed on (if applicable)
☐ was filed as PCT international Application No. on and was amended under PCT Article 19 on (if applicable)

I hereby authorize and request my attorneys at Jones Day to insert herein parentheses (Application No. _____ filed _____) the filing date and application number of said application when known.

I hereby state that I have reviewed and understand the contents of the above identified application, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

EARLIEST FOREIGN APPLICATION(S), IF ANY, FILED PRIOR TO THE FILING DATE OF THE APPLICATION				
APPLICATION NUMBER	COUNTRY	DATE OF FILING (day, month, year)	PRIORITY CLAIMED	
			YES ☐	NO ☐
			YES ☐	NO ☐

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below.

PROVISIONAL APPLICATION NUMBER	FILING DATE

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information known to me which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

NON-PROVISIONAL APPLICATION SERIAL NO.	FILING DATE	STATUS		
		PATENTED	PENDING	ABANDONED/INACTIVE
09/470,662	12/22/99	☒		
09/113,733	7/10/98	☒		
08/450,793	5/25/95	☒		
08/062,451	5/13/93			☒
08/011,669	1/28/93			☒
PCT/US92/08220	9/25/92			☒

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

201	FULL NAME OF INVENTOR	LAST NAME: Kunz	FIRST NAME: Lawrence	MIDDLE NAME: L.	
	RESIDENCE & CITIZENSHIP	CITY: Sammamish	STATE OR FOREIGN COUNTRY: WA	COUNTRY OF CITIZENSHIP: U.S.A.	
	POST OFFICE ADDRESS	STREET: 2310 223rd Court NE	CITY: Sammamish	STATE OR COUNTRY: WA 98074	ZIP CODE:
		SIGNATURE OF INVENTOR 201		DATE: May 22, 2006	
202	FULL NAME OF INVENTOR	LAST NAME: Anderson	FIRST NAME: Peter	MIDDLE NAME: G.	
	RESIDENCE & CITIZENSHIP	CITY: Birmingham	STATE OR FOREIGN COUNTRY: AL	COUNTRY OF CITIZENSHIP: U.S.A.	
	POST OFFICE ADDRESS	STREET: 406 Delcris Drive	CITY: Birmingham	STATE OR COUNTRY: AL	ZIP CODE: 35226
		SIGNATURE OF INVENTOR 202		DATE	
203	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 203		DATE	
204	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 204		DATE	
205	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 205		DATE	

DECLARATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below at 201 et seq. beneath my name.

I believe I am the original, first and sole inventor if only one name is listed at 201 below, or an original, first and joint inventor if plural names are listed at 201 et seq. below, of the subject matter which is claimed and for which a patent is sought on the invention entitled

Therapeutic Inhibitor of Vascular Smooth Muscle Cells

and for which a patent application:

☐ is attached hereto and includes amendment(s) filed on (if applicable)
☒ was filed in the United States on July 20, 2001 as Application No. 09/910,388 (for declaration not accompanying application) with amendment(s) filed on (if applicable)
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I hereby authorize and request my attorneys at Jones Day to insert herein parentheses (Application No. _____ filed _____) the filing date and application number of said application when known.

I hereby state that I have reviewed and understand the contents of the above identified application, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

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EARLIEST FOREIGN APPLICATION(S), IF ANY, FILED PRIOR TO THE FILING DATE OF THE APPLICATION				
APPLICATION NUMBER	COUNTRY	DATE OF FILING (day, month, year)	PRIORITY CLAIMED	
			YES ☐	NO ☐
			YES ☐	NO ☐

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below.

PROVISIONAL APPLICATION NUMBER	FILING DATE

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information known to me which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

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08/062,451	5/13/93			☒
08/011,669	1/28/93			☒
PCT/US92/08220	9/25/92			☒

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

201	FULL NAME OF INVENTOR	LAST NAME: Kunz	FIRST NAME: Lawrence	MIDDLE NAME: L.	
	RESIDENCE & CITIZENSHIP	CITY: Sammamish	STATE OR FOREIGN COUNTRY: WA	COUNTRY OF CITIZENSHIP: U.S.A.	
	POST OFFICE ADDRESS	STREET: 2310 223rd Court NE	CITY: Sammamish	STATE OR COUNTRY: WA 98074	ZIP CODE:
		SIGNATURE OF INVENTOR 201		DATE	
202	FULL NAME OF INVENTOR	LAST NAME: Anderson	FIRST NAME: Peter	MIDDLE NAME: G.	
	RESIDENCE & CITIZENSHIP	CITY: Birmingham	STATE OR FOREIGN COUNTRY: AL	COUNTRY OF CITIZENSHIP: U.S.A.	
	POST OFFICE ADDRESS	STREET: 406 Delcris Drive	CITY: Birmingham	STATE OR COUNTRY: AL	ZIP CODE: 35226
		SIGNATURE OF INVENTOR 202: Peter L. Anderson		DATE: 6-12-06	
203	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 203		DATE	
204	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 204		DATE	
205	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 205		DATE	

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Serial No.:	09/910,388	Art Unit:	1653
Filed:	July 20, 2001	Examiner:	Hope A. Robinson
For:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	Attorney Docket No.:	10177-211-999 (formerly 295.003US5)

CONSENT BY ASSIGNEE FOR CORRECTION OF INVENTORSHIP PURSUANT TO 37 C.F.R. § 1.48(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Boston Scientific Scimed, Inc., a Minnesota corporation having a principal place of business at One Scimed Place, Maple Grove, MN 55311-1566, **Assignee,** of the entire right, title, and interest in, to and under the invention and U.S. patent application Serial No. 09/910,388, filed July 20, 2001, entitled "Therapeutic Inhibitor of Vascular Smooth Muscle Cells," hereby consents to amendment of the application to name the following actual inventors: Dr. Lawrence L. Kunz and Dr. Peter G. Anderson.

The above-identified application is a continuation of U.S. patent application Serial No. 09/470,662, issued as U.S. Patent No. 6,268,390, which is a continuation of U.S. patent application Serial No. 09/113,733, issued as U.S. Patent No. 6,074,659, which is a continuation of U.S. patent application Serial No. 08/450,793 ("the '793 application"), issued as U.S. Patent No. 5,811,447, which is a continuation of U.S. patent application Serial No. 08/062,451 ("the '451 application"), now abandoned, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669, now abandoned, which is a continuation-in-part of International Application No. PCT/US92/08220, published as WO 94/07529.

Inventor Dr. Lawrence L. Kunz assigned his rights in the '451 application to NeoRx Corporation by virtue of an Assignment recorded on March 9, 1995 at Reel 1375, Frame 924-927. Subsequently, NeoRx Corporation assigned the '793 application, which claims priority

to the '451 application, to Scimed Life Systems, Inc. (which changed its name to Boston Scientific Scimed, Inc.) by virtue of an Assignment recorded on April 23, 2003 at Reel 013974, Frame 0188-0192.

Inventor Dr. Peter G. Anderson has assigned his rights in the above-identified application (S/N 09/910,388) to The UAB Research Foundation ("UABRF"). Subsequently, UABRF assigned the above-identified application (S/N 09/910,388) to Boston Scientific Scimed, Inc. (previously Scimed Life Systems, Inc.) by virtue of the Patent Assignment Agreement dated February 11, 2005. A Confirmatory Assignment of the rights transferred to Boston Scientific Scimed, Inc. pursuant to this February 11, 2005 agreement is submitted for recordation herewith.

The undersigned is empowered to act on behalf of the Assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: June 21, 2006

Typed Name: Scott T. Bluni

Position/Title: Assistant Secretary

Boston Scientific Scimed, Inc.
One Scimed Place
Maple Grove, MN 55311-1566

SOLE

ASSIGNMENT

WHEREAS, I, Peter G. Anderson, ASSIGNOR, citizen of the United States, residing at 406 Delcris Drive, Birmingham, AL 35226, am the inventor of the inventions in the United States patents and patent applications set forth in Appendix A annexed hereto

and WHEREAS, The UAB Research Foundation, ASSIGNEE, is desirous of obtaining my entire right, title and interest in, to and under the said inventions and the said United States patents and applications:

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) to me in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, I, the said ASSIGNOR, have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, my entire right, title and interest in, to and under the said inventions, and the said United States patents and applications and all divisions, renewals and continuations thereof, and all Patents of the United States which may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which have been or may hereafter be filed for said inventions in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof;

AND I HEREBY authorize and request the Commissioner for Patents and any Official of any country or countries foreign to the United States, whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND I HEREBY covenant and agree that I have full right to convey the entire interest herein assigned, and that I have not executed, and will not execute, any agreement in conflict herewith.

AND I HEREBY further covenant and agree that I will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to me respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 12 day of June, 2006

Peter G Anderson L.S.

State of)
) SS.:
County of)

On June 12, 2006, before me, Karen D. Songer, Notary Public, personally appeared Peter G. Anderson, personally known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Karen D. Songer

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 3, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

APPENDIX A (Page 1 of 3)

Serial #	Title	Filing Date	Patent #	Issue Date
08/389,712	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	2/15/1995	6,515,009	2/4/2003
09/590,002	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/3/2000		
09/910,387	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/20/2001	6,599,928	7/29/2003
08/546,794	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	10/23/1995	6,171,609	1/9/2001
10/190,211	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/3/2002		
10/860,486	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/2/2004		
08/450,793	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	5/25/1995	5,811,447	9/22/1998
08/738,733	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	10/28/1996	5,733,925	3/31/1998
09/113,733	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/10/1998	6,074,659	6/13/2000
09/470,662	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/22/1999	6,268,390	7/31/2001
09/910,388	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/20/2001		
08/829,991	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	3/31/1997	6,306,421	10/23/2001
09/896,208	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/29/2001	6,491,938	12/10/2002
09/995,490	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	11/27/2001	6,569,441	5/27/2003
08/829,685	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	3/31/1997	5,981,568	11/9/1999
09/361,194	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/26/1999	6,358,989	3/19/2002
10/024,885	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/18/2001	6,663,881	12/16/2003
10/330,834	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/27/2002	6,720,350	4/13/2004

08/242,161	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	5/12/1994	5,847,007	12/8/1998
08/300,357	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/2/1994	5,472,985	12/5/1995
08/450,520	Methods to Determine TGF-Beta	5/25/1995	5,545,569	8/13/1996
08/476,735	Method for Identifying an Agent Which Increases TGF-Beta Levels	6/7/1995	5,595,722	1/21/1997
08/477,393	Method to Determine TGF-Beta	6/7/1995	6,395,494	5/28/2002
08/486,334	Prevention and Treatment of Cardiovascular Pathologies	6/7/1995	5,770,609	6/23/1998
08/528,810	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/15/1995	5,599,844	2/4/1997
08/560,808	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/21/1995	5,773,479	6/30/1998
08/965,589	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	6,166,090	12/26/2000
08/965,254	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	5,945,456	8/31/1999
08/973,570	Prevention and Treatment of Cardiovascular Pathologies	12/5/1997	6,197,789	3/6/2001
09/082,643	Prevention and Treatment of Cardiovascular Pathologies	5/21/1998	6,251,920	6/26/2001
09/306,606	Prevention and Treatment of Cardiovascular Pathologies	5/6/1999	6,262,079	7/17/2001
09/754,775	Prevention and Treatment of Cardiovascular Pathologies	1/4/2001		
10/106,761	Method to Determine TGF-Beta	3/26/2002		

09/057,323	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	4/9/1998	6,117,911	9/12/2000
09/567,558	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	5/5/2000	6,410,587	6/25/2002
10/170,971	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	6/13/2002	6,734,208	5/11/2004

CONFIRMATORY ASSIGNMENT OF PATENT RIGHTS

The UAB Research Foundation of Birmingham, Alabama ("Assignor"), having a principal place of business at 1530 3rd Avenue South, AB 1120 G, Birmingham, Alabama, confirms that pursuant to the Patent Assignment Agreement between Assignor and Boston Scientific Scimed, Inc. ("Assignee") dated February 11, 2005, Assignor hereby sells, assigns, transfers, and sets over, unto Assignee, a corporation of Minnesota, having a principal place of business at One Scimed Place, Maple Grove, MN, 55311-1566 the entire right, title, and interest in, to and under the United States patents and patent applications identified below, and the invention(s) set forth therein, including any and all rights that Assignor has received from Dr. Peter G. Anderson for said inventions, such as those received pursuant to the Assignment from Dr. Peter G. Anderson to Assignor submitted herewith, and any and all claims, demands, causes of action, damages and remedies of every kind recoverable at law or in equity or otherwise from any and every party for any and every infringement of such patents and patent applications together with the rights to bring and maintain any action for past infringements and for recovery of damages and fees:

Serial #	Title	Filing Date	Patent #	Issue Date
08/389,712	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	2/15/1995	6,515,009	2/4/2003
09/590,002	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/3/2000		
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10/330,834	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/27/2002	6,720,350	4/13/2004
08/242,161	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	5/12/1994	5,847,007	12/8/1998
08/300,357	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/2/1994	5,472,985	12/5/1995
08/450,520	Methods to Determine TGF-Beta	5/25/1995	5,545,569	8/13/1996

Serial #	Title	Filing Date	Patent #	Issue Date
08/476,735	Method for Identifying an Agent Which Increases TGF-Beta Levels	6/7/1995	5,595,722	1/21/1997
08/477,393	Method to Determine TGF-Beta	6/7/1995	6,395,494	5/28/2002
08/486,334	Prevention and Treatment of Cardiovascular Pathologies	6/7/1995	5,770,609	6/23/1998
08/528,810	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/15/1995	5,599,844	2/4/1997
08/560,808	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/21/1995	5,773,479	6/30/1998
08/965,589	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	6,166,090	12/26/2000
08/965,254	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	5,945,456	8/31/1999
08/973,570	Prevention and Treatment of Cardiovascular Pathologies	12/5/1997	6,197,789	3/6/2001
09/082,643	Prevention and Treatment of Cardiovascular Pathologies	5/21/1998	6,251,920	6/26/2001
09/306,606	Prevention and Treatment of Cardiovascular Pathologies	5/6/1999	6,262,079	7/17/2001
09/754,775	Prevention and Treatment of Cardiovascular Pathologies	1/4/2001		
10/106,761	Method to Determine TGF-Beta	3/26/2002		

Serial #	Title	Filing Date	Patent #	Issue Date
09/057,323	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	4/9/1998	6,117,911	9/12/2000
09/567,558	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	5/5/2000	6,410,587	6/25/2002
10/170,971	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	6/13/2002	6,734,208	5/11/2004

Date: June 12, 2006

By: _____
Name: William S. White
Title: Chief Executive Officer
Company: The UAB Research Foundation

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 12th day of June, 2006

_____ (L.S.)

State of)
) SS.:
County of)

On June 12, 2006, before me, Karen D. Songer, Notary Public, personally appeared William S. White, personally known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

_____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 3, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Express Mail No. **EV475142710US**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Lawrence L. Kunz Peter G. Anderson (as corrected)	Confirmation No.:	1690
Serial No.:	09/910,388	Art Unit:	1653
Filed:	July 20, 2001	Examiner:	Hope A. Robinson
For:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	Attorney Docket No.:	10177-211-999 (formerly 295.003US5)

STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR CORRECTION OF INVENTORSHIP UNDER 37 C.F.R. § 1.48(a)

Commission for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.48(a), Applicant hereby requests the United States Patent & Trademark Office ("USPTO") to correct the inventorship of the above-identified patent application by adding Dr. Peter G. Anderson as a co-inventor. In further support of its request to correct inventorship, Applicant hereby respectfully submits this statement of facts.

1. During a litigation involving certain U.S. patents related to the above-identified application, specifically U.S. Patent Nos. 6,171,609, 6,515,009 and 6,599,928, certain facts came to light which indicate that Dr. Peter G. Anderson should be a named inventor on the above-identified application as well as on currently pending U.S. patent application Serial Nos. 10/860,486 and 09/590,002. The litigation, filed in the United States District Court for the District of Delaware, is captioned *Boston Scientific Scimed, Inc. et al. v. Cordis Corporation et al.*, Civil Action No. 03-283-SLR (D. Del.) (hereinafter "the Cordis litigation").

2. The present application and these two other applications are related to U.S. patent application Serial No. 08/011,669 filed on January 28, 1993, now abandoned. *See* Exh. 1.

- Specifically, currently pending U.S. application Serial No. 10/860,486 is a continuation of U.S. patent application Serial No. 10/190,211, now abandoned, which is a continuation of U.S. patent application Serial No. 08/894,350, now abandoned, which is a National Stage application of International Application No. PCT/US96/02125, published as WO 96/25176, which claims the priority benefit to U.S. patent application Serial No. 08/389,712, issued as U.S. Patent No. 6,515,009, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669.

- Currently pending U.S. application Serial No. 09/590,002 is a continuation of U.S. patent application Serial No. 08/389,712, issued as U.S. Patent No. 6,515,009, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669.

- Currently pending U.S. application Serial No. 09/910,388 is a continuation of U.S. patent application Serial No. 09/470,662, issued as U.S. Patent No. 6,268,390, which is a continuation of U.S. patent application Serial No. 09/113,733, issued as U.S. Patent No. 6,074,659, which is a continuation of U.S. patent application Serial No. 08/450,793, issued as U.S. Patent No. 5,811,447, which is a continuation of U.S. patent application Serial No. 08/062,451, now abandoned, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669.

Relationship Between NeoRx and UAB in 1990-1993

3. On information and belief, in December 1990 Dr. Peter G. Anderson, a professor employed by the University of Alabama at Birmingham ("UAB") with an obligation to assign his intellectual property to The UAB Research Foundation ("UABRF"), and Dr. Lawrence L. Kunz, a principal scientist employed by NeoRx Corporation ("NeoRx") with an obligation to assign his intellectual property to NeoRx, met at the American College of Veterinary Pathologists annual meeting in Phoenix, Arizona where they discussed *inter alia*, the prevention or treatment of restenosis. Exh. 2; Exh. 3 at 61-62. Thereafter, Dr. Anderson and Dr. Kunz began collaborating on the development of treatments for and prevention of restenosis.

4. On June 1, 1991 NeoRx and UABRF entered into an agreement relating to research work concerning restenosis. The agreement also delineated NeoRx's and UABRF's respective rights in the technology being developed as follows: inventions made

solely by NeoRx would be owned by NeoRx, inventions made solely by UABRF would be owned by UABRF and inventions jointly made by NeoRx and UABRF would be co-owned by NeoRx and UABRF. Exh. 4 at 6-7.

5. On September 27, 1991, U.S. patent application Serial No. 07/767,254 ("the '254 application") was filed naming as inventors Dr. Kunz and Dr. Anderson.

6. On September 25, 1992, PCT/US92/08220 was filed naming Dr. Kunz as the inventor. PCT/US92/08220 originally claimed priority to the '254 application but that claim to priority was subsequently withdrawn in the PCT application. Exh. 5 at BSX 404589; Exh. 6 at 160.

7. On January 28, 1993, U.S. patent application Serial No. 08/011,669 ("the '669 application"), was filed naming as inventors Dr. Kunz and Mr. Richard Klein, a laboratory technologist at NeoRx. Exh. 7; Exh. 8 at 278.

8. On information and belief, in approximately April to June of 1993 UABRF contacted NeoRx and informed NeoRx that Dr. Anderson should be named an inventor of PCT application PCT/US92/08220 and of the '669 application. Exh. 9; Exh. 3 at 109-119, 121-122; Exh. 10 at 132-134; Exh. 8 at 284; Exh. 6 at 57. On June 14, 1993, NeoRx agreed to add Dr. Anderson as an inventor to the then-pending patent applications. Exh. 11; Exh. 10 at 136-140; Exh. 6 at 58-59. Furthermore, UABRF and NeoRx entered into a modified agreement which reiterated the ownership of NeoRx's and UABRF's respective rights in the technology being developed as stated in their previous agreement of June 1, 1991 as follows: inventions made solely by NeoRx would be owned by NeoRx, inventions made solely by UABRF would be owned by UABRF and inventions jointly made by NeoRx and UABRF would be co-owned by NeoRx and UABRF. Exh. 12; Exh. 3 at 129.

Changes of Inventorship on U.S. Patent No. 5,811,447

9. On May 13, 1993, U.S. patent application Serial No. 08/062,451 ("the '451 application") was filed naming seven inventors, including among others Dr. Kunz, Dr. John Reno, Mr. Klein and Dr. Anderson. On information and belief, in November 1994 an assignment was prepared from Dr. Anderson to NeoRx for the '451 application. Exh. 13; Exh. 3 at 132-138; Exh. 14 at 48-49; Exh. 6 at 114-120. Dr. Anderson signed and returned to NeoRx the assignment, which contained a reference to the earlier filed '254 application. Exh. 13; Exh. 3 at 132-138; Exh. 14 at 48-49; Exh. 6 at 114-120. NeoRx subsequently filed with the USPTO an assignment of the '451 application which did not contain a reference to

the '254 application. Exh. 15; Exh. 3 at 140-143; Exh. 14 at 51-55; Exh. 6 at 114-120. Dr. Anderson testified that he did not remember reviewing and signing the assignment of the '451 application as filed with the USPTO. Exh. 15; Exh. 3 at 140-143; Exh. 14 at 51-55; Exh. 6 at 114-120.

10. On May 25, 1995, U.S. patent application Serial No. 08/450,793 ("the '793 application") was filed, which was a file wrapper continuation of the '451 application, and later issued as U.S. Patent No. 5,811,447 ("the '447 patent"). As filed, the '793 application named the same seven inventors as the '451 application, including among others Dr. Kunz, Dr. Reno, Mr. Klein and Dr. Anderson. On May 21, 1996, NeoRx filed a petition to correct the inventorship of the '793 application under 37 C.F.R. § 1.48(b) to limit the inventors to Dr. Kunz and Dr. Reno. Exh. 16; Exh. 6 at 108-113. However, that petition was never acted on by the USPTO. On June 17, 1996, NeoRx filed another petition to correct inventorship to limit the inventor to Dr. Kunz. Exh. 17. That petition was also never acted on by the USPTO. On January 27, 2000, after the '793 application issued as the '447 patent, NeoRx filed a request for a certificate of correction to delete all of the named inventors except Dr. Kunz, but that request was rejected by the USPTO. Exh. 18. On October 11, 2000, NeoRx filed a renewed request for a certificate of correction to delete all of the named inventors except Dr. Kunz. The USPTO did not grant the portion of the request for a certificate of correction relating to inventorship. Exh. 19.

11. On information and belief, on January 30, 2003, Dr. Janet Embretson, outside patent counsel for NeoRx, requested Dr. Anderson's consent to be removed from the '447 patent. Dr. Anderson disagreed with Dr. Embretson's assessment and indicated that he had contributed to certain claims of the '447 patent. Exh. 20; Exh. 3 at 163-170, 175-183; Exh. 6 at 209-221; Exh. 21 at 35, 106-108.

Changes of Inventorship on U.S. Patent Application Serial No. 08/389,712

12. On February 15, 1995, U.S. patent application Serial No. 08/389,712 ("the '712 application"), was filed naming Dr. Kunz and Mr. Klein as inventors. The '712 application issued as U.S. Patent No. 6,515,009. On information and belief, on September 25, 1996, Ms. Anna Lewak Wight, NeoRx's intellectual property counsel, indicated to Dr. Anderson that he would be added as an inventor to U.S. patent application Serial No. 08/406,921 ("the '921 application"), which is related to the '712 application. Exh. 22; Exh. 6 at 62-64. On December 3, 1996 NeoRx sent Dr. Anderson a letter indicating he would be added as an inventor to the '712 application. Exh. 23; Exh. 3 at 144, 155-163; Exh. 6 at 66-

77. In June 1997, NeoRx filed a petition to correct the inventorship of the '712 application to change inventorship from Dr. Kunz and Mr. Klein to Dr. Kunz and Dr. Reno, and as to which Ms. Wight indicated that NeoRx had previously performed an inventorship analysis in early 1996 to support this change. Exh. 6 at 122-127; Exh. 24. Also, this petition was not acted on by the USPTO. The petition did not seek to add Dr. Anderson as an inventor on the '712 application. Exh. 6 at 132-146.

The Cordis Litigation

13. In April 2003, Boston Scientific Scimed, Inc. (formerly Scimed Life Systems, Inc.) purchased from NeoRx issued patents and pending patent applications relating to the treatment of restenosis, including the three issued patents involved in the Cordis litigation, (*i.e.,* U.S. Patent Nos. 6,171,609, 6,515,009 and 6,599,928), as well as pending U.S. application Serial Nos. 10/860,486 ("the '486 application"), 09/590,002 ("the '002 application") and 09/910,388 ("the '388 application"). Exh. 3 at 173.

14. In the course of the Cordis litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 6,515,009, which issued from the '712 application, a common ancestor application of the '002 and '486 applications. Exh. 3 at 161.

15. In the course of that litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 6,171,609, which claims priority to U.S. Patent No. 6,515,009, which issued from the '712 application, and is related to the '002 and '486 applications. Exh. 3 at 194.

16. In the course of the Cordis litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 6,599,928, which claims priority to U.S. Patent No. 6,515,009, which issued from the '712 application, and is related to the '002 and '486 applications. Exh. 3 at 196.

17. In the course of that litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 5,811,447, which issued from U.S. Patent application Serial No. 08/450,793, to which the '388 application claims priority. Also, the '447 patent and the '002 and '486 applications are related to U.S. Patent Application Serial No. 08/011,669. Exh. 3 at 167-170.

18. On February 11, 2005, UABRF assigned to Boston Scientific Scimed, Inc. (previously Scimed Life Systems, Inc.) all rights in the above-identified application for which Dr. Anderson was obligated to assign to UABRF.

19. Dr. Anderson has simultaneously submitted with the petition to correct inventorship pursuant to 37 C.F.R. § 1.48(a) a statement that the error of his not being named an inventor of U.S. application Serial No. 09/910,388 arose without any deceptive intention on his part. As shown by Dr. Anderson's statement and the new declaration submitted herewith, Dr. Anderson believes that he is a co-inventor of the pending claims in U.S. application Serial No. 09/910,388.

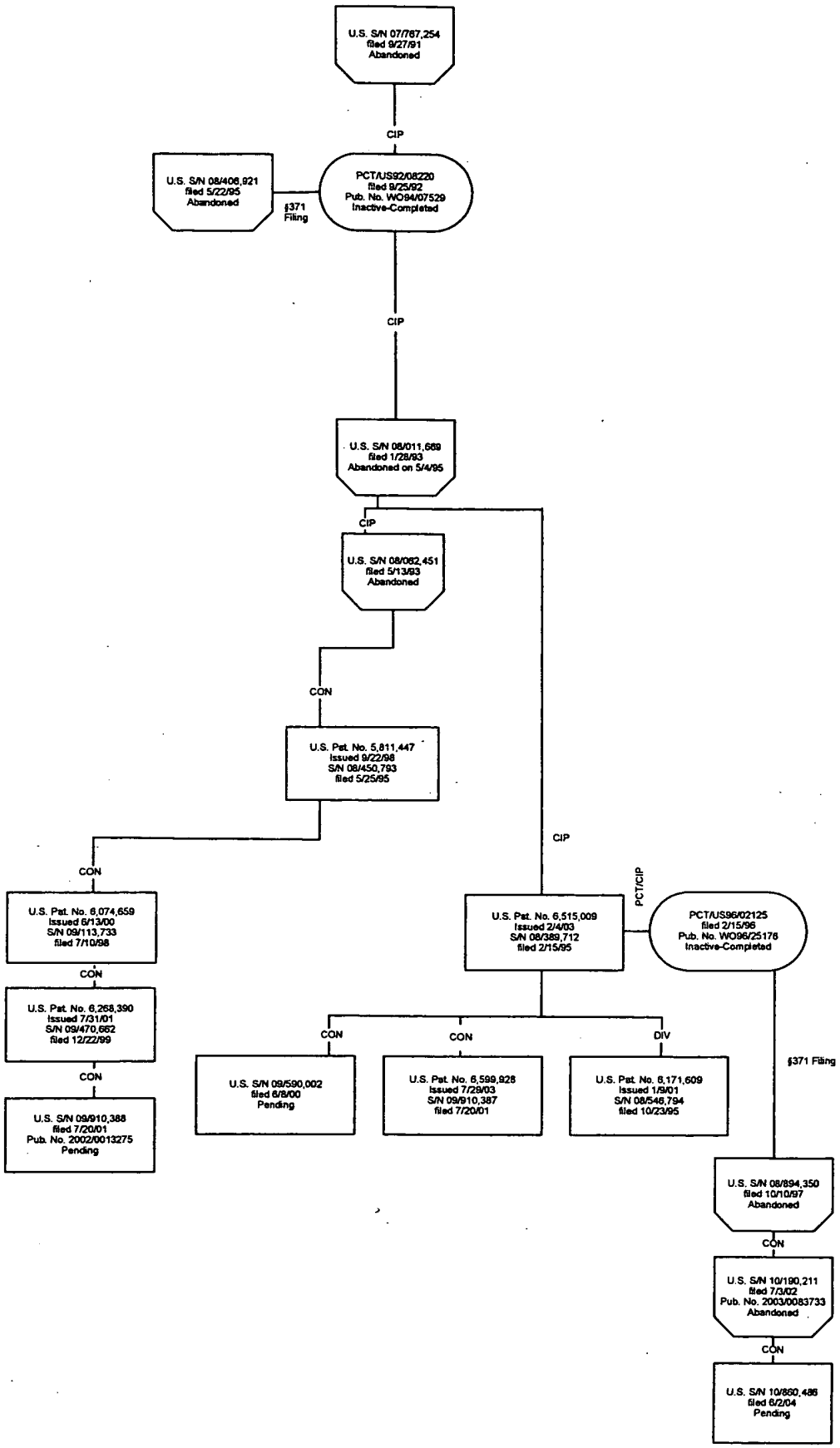
20. The other named inventor of U.S. application Serial No. 09/910,388, Dr. Kunz, has submitted a new declaration.

If any issues remain, the Examiner is invited to telephone the undersigned to discuss the same and to arrange for prompt and efficient handling of this matter.

Respectfully submitted,

Date July 10, 2006

Gidon D. Stern (Reg. No. 27,469)
By: Catharina J. Chin Eng (Reg. No. 42,412)
JONES DAY LLP
222 East 41st Street
New York, NY 10017
(212) 326-3939



Copy fr L. Kunz 3/6/91

December 18, 1990

Lawrence L. Kunz, DVM
Experimental Pathologist
NeoRx
410 West Harrison
Seattle, WA 98119

Dear Larry:

Enjoyed visiting with you in Phoenix at the American College of Veterinary Pathologists meeting. Sounds like you are staying busy and also having a good time. Enclosed is a brief outline explaining the significance of restenosis after percutaneous transluminal coronary angioplasty (PTCA) and the possible mechanisms that we discussed for directing the delivery of compound to these angioplasty lesions. As we discussed, numerous investigators are trying to develop techniques for preventing restenosis after PTCA. This is a very "hot" area of research and I am excited about the possibility of developing a directed approach to treatment. This will be a very interesting line of investigation. Let me know if you need a more detailed write-up or if you need additional information.

Hope you have a Merry Christmas and a Happy New Year. I look forward to hearing from you.

Best regards,

Pete

Peter G. Anderson, D.V.M., Ph.D.
(205) 934-2414
Enclosure

Date 1-6-05 Exhibit # 6
Case CORDIS v. BOSTON SCIENTIFIC
Deponent L. KUNZ
Reporter TIA REIDT
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

ANTIBODY DIRECTED DELIVERY OF COMPOUNDS TO CONTROL SMOOTH MUSCLE CELL PROLIFERATION AFTER PERCUTANEOUS TRANSLUMINAL CORONARY ANGIOPLASTY

Peter G. Anderson, DVM, PhD & Lawrence L. Kunz, DVM

Percutaneous transluminal coronary angioplasty (PTCA) has gained favor as the primary treatment modality in many patients with coronary artery disease. PTCA can relieve myocardial ischemia in patients with coronary artery disease by reducing lumen obstruction and improving coronary flow. Over 200,000 PTCA procedures were performed in 1988 and recent reports estimate that over 500,000 PTCAs will be performed per year by 1991 (1). Despite improvements in equipment and operator expertise the restenosis rate after PTCA remains a significant problem, with from 13 to 48% of patients developing restenosis by 1 to 3 months after successful dilatation. This restenosis results in significant morbidity and mortality and necessitates further interventions.

The mechanisms responsible for restenosis after PTCA are not well understood. The restenotic lesion consists of an exuberant overgrowth of smooth muscle cells. This neointimal proliferation of smooth muscle cells has been well characterized in humans and in several animal model systems, however the mechanisms responsible for the smooth muscle cell growth are not know. Many investigators have evaluated factors that control smooth muscle cell growth and from the results of these studies have suggested possible mechanisms for controlling smooth muscle cell proliferation after PTCA (2-4). To date, no successful interventions have proven effective in preventing restenosis.

A successful procedure for prevention of smooth muscle cell proliferation after PTCA would be of great clinical importance. There are numerous compounds that could prevent smooth muscle cell proliferation, however many of these compounds have untoward systemic effects that severely detract from their therapeutic usefulness. In order to more efficiently prevent restenosis after PTCA, compounds that prevent smooth muscle cell proliferation must be delivered directly to the site of PTCA. Binding antiproliferative compounds to antibodies that will specifically attach to and be internalized by smooth muscle cells could result in selective prevention of smooth muscle cell proliferation without causing adverse systemic effects. A compound such as heparin which is known to suppress

smooth muscle cell proliferation could be delivered locally to prevent restenosis without the severe problems associated with systemic anticoagulation. Other cytotoxic substances that will either kill smooth muscle cells (toxins) or prevent cell division (colchicine, methotrexate, adriamycin, etc.) could also prevent restenosis if delivered to the PTCA site. A balloon catheter system that could be used to deliver the smooth muscle cell specific antibodies with bound cytotoxic compounds is currently available (5).

Prevention of smooth muscle cell proliferation at the site of PTCA without causing adverse systemic effects could be achieved by directing drug therapy to the smooth muscle cells. This could be accomplished by binding the efficacious drugs to antibodies specific for smooth muscle cell surface membranes. When these antibody-drug conjugates are internalized, the drug will be delivered directly to the target smooth muscle cells. The balloon delivery system is currently available and could be used to locally infuse the antibody-drug conjugate to the PTCA site. These treatment modalities could prove successful in preventing restenosis after PTCA.

1. Detre et al. New Engl J Med 318:265-270, 1988
2. Fanelli C & Arnoff R. Amer Heart Journal 119:357-368, Feb. 1990
3. Popma JJ & Topol EJ. Amer J Med 88:16N-24N, Jan. 1990
4. Liu et al. Circulation 79:1374-1387, June 1989
5. Nabel et al. Science 1342-1344, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOSTON SCIENTIFIC SCIMED, Inc.;
and BOSTON SCIENTIFIC CORPORATION,
Plaintiff,
vs. CIVIL ACTION FILE NO. 03-283-SLR
CORDIS CORPORATION; and
JOHNSON & JOHNSON, INC.,
Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOSTON SCIENTIFIC SCIMED, INC., and
BOSTON SCIENTIFIC CORPORATION,
Plaintiffs and Counterclaim
Defendants,
vs. CIVIL ACTION NO. 03-1138-SLR
CORDIS CORPORATION, JOHNSON & JOHNSON,
INC., GUIDANT CORPORATION, GUIDANT
SALES CORPORATION, and ADVANCED
CARDIOVASCULAR SYSTEMS, INC.,
Defendants and Counterclaim
Plaintiffs.

VIDEOTAPED DEPOSITION OF PETER G. ANDERSON, Ph.D.,

The deposition of PETER G. ANDERSON, Ph.D., was
9:29 taken before Sharon A. Gabrielli, RPR, commencing at
a.m., on January 18, 2005, at the law offices of
Balch & Bingham, 1901 6th Avenue North, Birmingham,
Alabama

HIGHLY CONFIDENTIAL
--oOo--

APPEARANCES

Appearing For the Plaintiff:
THOMAS J. MELORO, ESQ.
Kenyon & Kenyon
One Broadway
New York, New York 10004-1050
212.425.7200

Appearing For the Defendant Cordis Corporation and Johnson & Johnson:

MICHAEL J. TIMMONS, ESQ.
Patterson, Belknap, Webb & Tyler
1133 Avenue of the Americas
New York, New York 10036-6710
212.336.2000

Appearing For the Defendant the Guidant entities and Advanced Cardiovascular Systems, Inc:
EDWARD A. MAS, II, ESQ.
McAndrews, Held & Malloy, Ltd.
500 West Madison Street
34th Floor
Chicago, Illinois 60661
312.775.8000

Appearing For the Deponent and University of Alabama Research Foundation:

LAWRENCE K. NODINE, ESQ.
TINA WILLIAMS McKEON, Ph.D., ESQ.
JEFFREY BRICKMAN, ESQ.
Needle & Rosenberg, P.C.
999 Peachtree Street
Suite 1000
Atlanta, Georgia 30309-3915
678.420.9300

Also Present:
Ricky Acker, Videographer
Scott T. Bluni, Boston Scientific Corp.

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INDEX

EXAMINATION

EXHIBITS

EXHIBITS (CONTINUED)

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cell proliferation after balloon injury by 11:14:58 AM
polymer-based anticoagulant and nonanticoagulant 11:15:00 AM
heparin delivered into the adventitia with a rat 11:15:05 AM
carotid artery injury model." 11:15:06 AM
Do you know where the smooth muscle 11:15:09 AM
cell proliferation in Edelman took place; was it 11:15:13 AM
within the artery itself? 11:15:17 AM
A. I didn't do those experiments, so I 11:15:20 AM
couldn't tell you definitively. 11:15:23 AM
Q. At the bottom of that page, in the 11:15:53 AM
right-hand corner, the first sentence of the 11:15:54 AM
last paragraph reads, "On the basis of the above 11:15:55 AM
studies, heparin was chosen in our study as a 11:15:58 AM
drug with a high likelihood of inhibiting smooth 11:16:01 AM
muscle cell proliferation." Do you agree with 11:16:05 AM
that statement? 11:16:10 AM
MR. NODINE: Objection to -- 11:16:12 AM
objection to form and objection to lack of 11:16:11 AM
foundation. 11:16:13 AM
THE WITNESS: Yes. 11:16:24 AM
Q. (By Mr. Timmons) Okay. And the rest 11:16:24 AM
of that paragraph talks about some of the 11:16:27 AM
reasons -- some of the factors that may have 11:16:30 AM
contributed to the failure of the heparin to 11:16:34 AM
inhibit smooth muscle cell growth in the study; 11:16:36 AM

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do you see that? 11:16:39 AM
A. Yes. 11:16:40 AM
Q. And -- and one of the problems you 11:16:41 AM
point out is with the stent design; is that 11:16:42 AM
correct? 11:16:45 AM
A. What are you -- 11:16:45 AM
Q. I'm -- 11:16:46 AM
A. -- specifically -- 11:16:46 AM
Q. -- still on the bottom -- 11:16:47 AM
A. Oh, okay. 11:16:48 AM
Q. -- "One obvious explanation for this 11:16:48 AM
lack of efficacy involves the particular stent 11:16:48 AM
coated by the polymer." Was the design of the 11:16:48 AM
Gianturco-Roubin stent one of the problems with 11:16:54 AM
the -- with this study? 11:16:58 AM
MR. NODINE: Objection, lack of 11:17:00 AM
foundation, objection to form. 11:17:01 AM
THE WITNESS: I'm -- I'm not an 11:17:05 AM
engineer, so I can't comment on the -- on the 11:17:06 AM
actual design of the stent. 11:17:08 AM
Q. (By Mr. Timmons) Do you agree with 11:17:13 AM
the statement that "one obvious explanation for 11:17:14 AM
this lack of efficacy involves the particular 11:17:16 AM
stent coated by the polymer"? 11:17:18 AM
MR. NODINE: Objection to form, lack 11:17:21 AM

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of foundation. 11:17:21 AM
THE WITNESS: I mean, that -- that's 11:17:23 AM
what we wrote. 11:17:30 AM
Q. (By Mr. Timmons) Okay. If you would 11:17:32 AM
turn to page 245, please. In the left-hand 11:17:41 AM
column, it states that "while the in vitro 11:17:46 AM
spectrophotometric assay for heparin did 11:17:53 AM
demonstrate that heparin was continuously 11:17:56 AM
released over two to three weeks with this 11:17:58 AM
polymer," the level -- "the levels measured are 11:18:00 AM
low and may simply not be adequate to inhibit 11:18:01 AM
smooth muscle cell proliferation in vivo." 11:18:07 AM
Was one of the other possible 11:18:08 AM
problems with this study is that the dosage of 11:18:10 AM
heparin was too low? 11:18:13 AM
MR. NODINE: Objection to form, lack 11:18:16 AM
of foundation. 11:18:17 AM
THE WITNESS: I think those two mean 11:18:22 AM
the same thing. 11:18:25 AM
Q. (By Mr. Timmons) Okay. And the last 11:18:27 AM
sentence reads, "site-specific drug delivery by 11:18:28 AM
polymers has only recently been applied to the 11:18:32 AM
problem of restenosis; improvements in polymer 11:18:35 AM
design and performance that allow higher 11:18:37 AM
concentrations of effective drugs may better 11:18:39 AM

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inhibit neointimal proliferation." 11:18:41 AM
Would you agree that the design of 11:18:43 AM
the polymer might have been a factor in the 11:18:45 AM
failure of this study? 11:18:47 AM
MR. NODINE: Objection to form, lack 11:18:49 AM
of foundation. 11:18:52 AM
THE WITNESS: Again, I'm not an 11:18:53 AM
expert in polymer development, so I can't 11:18:53 AM
comment about the development of the polymer. 11:18:58 AM
Q. (By Mr. Timmons) But do you disagree 11:19:01 AM
with the statement in this paper? 11:19:02 AM
MR. NODINE: Objection to form, lack 11:19:05 AM
of foundation. 11:19:05 AM
THE WITNESS: Higher concentrations 11:19:10 AM
of drug we felt would be more effective. How we 11:19:12 AM
came about that, I -- I can't comment on because 11:19:21 AM
I'm not an engineer. 11:19:24 AM
MR. TIMMONS: Okay. Why don't we 11:19:26 AM
take a quick break to change the tape. 11:19:31 AM
THE VIDEOGRAPHER: This marks the end 11:19:37 AM
of videotape number 1 in the deposition of Peter 11:19:37 AM
Anderson. We are going off the record, 11:19 11:19:40 AM
a.m. 11:19:47 AM
(Whereupon, there was a brief recess.) 11:23:38 AM
THE VIDEOGRAPHER: Here begins 11:27:13 AM

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videotape number 2 in the deposition of Peter Anderson. We are back on the record, 11:27 a.m. 11:27:13 AM 11:27:16 AM 11:27:19 AM

Q. (By Mr. Timmons) Dr. Anderson, I've provided you with a three-page document that was previously marked as Kunz Exhibit 6. It's NeoRx 1000 -- no, 10001 through 10003. And my question is whether or not you recognize this document? 11:27:21 AM 11:27:21 AM 11:27:26 AM 11:27:31 AM 11:27:37 AM 11:27:39 AM

A. Yes. 11:27:41 AM

Q. What is it? 11:27:41 AM

A. It's a letter and attached description that I wrote. 11:27:44 AM 11:27:51 AM

Q. Did you write the letter or the description or both? 11:27:58 AM 11:28:02 AM

A. Both. 11:28:05 AM

Q. Okay. And who was Dr. Kunz in December 1990? 11:28:05 AM 11:28:11 AM

MR. NODINE: Objection to form. 11:28:14 AM

THE WITNESS: He was an acquaintance of mine. 11:28:18 AM 11:28:19 AM

Q. (By Mr. Timmons) How did it come about that you drafted the description on the second two pages of Kunz Exhibit 6? 11:28:29 AM 11:28:30 AM 11:28:35 AM

A. What do you mean by "how did it come about" -- 11:28:45 AM 11:28:46 AM

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Q. Why did you -- 11:28:47 AM

A. -- specifically? 11:28:49 AM

Q. Why did you draft the description? 11:28:49 AM

A. As stated in the -- the cover letter, Dr. Kunz and I met just fortuitously, we both happened to be attending the same meeting, and we met at that meeting, discussed our jobs, and through that discussion, developed a -- a -- realized we had some mutual interests, scientific interests. So he asked me to write up a description of the area of our mutual interest. 11:28:56 AM 11:28:59 AM 11:29:09 AM 11:29:12 AM 11:29:18 AM 11:29:26 AM 11:29:29 AM 11:29:34 AM 11:29:42 AM

Q. When you met with Dr. Kunz in Phoenix in 1990, did you already -- was your interest in the significance of restenosis after percutaneous transluminal coronary angioplasty? 11:29:46 AM 11:29:52 AM 11:29:59 AM 11:30:04 AM 11:30:04 AM

A. That was in -- in general terms, at that time, my interest was in cardiovascular pathology. One component of the types of research that I was interested in and working on was specifically the post-angioplasty restenosis problem. 11:30:07 AM 11:30:13 AM 11:30:16 AM 11:30:22 AM 11:30:26 AM 11:30:33 AM 11:30:34 AM

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Q. Do you know if Dr. Kunz had done any work in this post-injury restenosis problem prior to December 18th, 1990? 11:30:34 AM 11:30:37 AM 11:30:41 AM

MR. NODINE: Objection to form, vague, ambiguous. 11:30:47 AM 11:30:47 AM

THE WITNESS: I can only comment on what he told me tell at the time or what I recall that he told me at the time. And in his discussions with me, he made it clear that he did not know anything about the -- the angioplasty or the problem of restenosis. 11:30:50 AM 11:30:52 AM 11:30:54 AM 11:30:59 AM 11:31:07 AM 11:31:10 AM

Q. (By Mr. Timmons) Okay. Did you also have knowledge regarding the possible mechanisms for directing the delivery of compounds to the angioplasty lesions prior to meeting with Dr. Kunz in December 1990? 11:31:15 AM 11:31:17 AM 11:31:20 AM 11:31:23 AM 11:31:27 AM

A. Can you rephrase or -- or say that again? 11:31:31 AM 11:31:37 AM

Q. (By Mr. Timmons) My question is whether or not you -- prior to your meeting with Dr. Kunz at this meeting in Phoenix, did you have knowledge regarding the possible mechanisms for directing the delivery of compounds to the angioplasty lesions? 11:31:37 AM 11:31:39 AM 11:31:40 AM 11:31:44 AM 11:31:47 AM 11:31:50 AM

A. Yes. 11:31:56 AM

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Q. Okay. Did Dr. Kunz, to the extent that he told you or -- or indicated to you, did he have any prior knowledge regarding the mechanisms for directing the delivery of compounds to angioplasty lesions? 11:31:57 AM 11:32:00 AM 11:32:02 AM 11:32:06 AM 11:32:08 AM

A. Again, if he did, he didn't share it with me at that point in time. 11:32:13 AM 11:32:17 AM

Q. Did Dr. Kunz have any knowledge regarding the -- directing the delivery of compounds to any particular locations in the body for therapeutic uses? 11:32:22 AM 11:32:25 AM 11:32:28 AM 11:32:32 AM

MR. NODINE: Objection to form, calls for speculation. 11:32:38 AM 11:32:38 AM

Q. (By Mr. Timmons) To the extent that -- that they were discussed at your meeting with him in Phoenix? 11:32:38 AM 11:32:38 AM 11:32:43 AM

A. During our meeting, he did describe some of the approaches that NeoRx was using to direct therapy to cancer cells. 11:32:46 AM 11:32:47 AM 11:32:54 AM

Q. What were the NeoRx -- NeoRx approaches to directing therapy to cancel -- cancer cells that Dr. Kunz told you about? 11:32:58 AM 11:33:01 AM 11:33:04 AM

A. He -- as I recall, and 15 years ago, as I recall, he described the general approach that NeoRx was using of targeted antibodies. 11:33:11 AM 11:33:15 AM 11:33:20 AM

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THE WITNESS: Yes. 01:48:55 PM
Q. (By Mr. Timmons) What are the 01:48:55 PM
applications? 01:48:56 PM
A. I can't -- I can't list the exact -- 01:49:02 PM
the numbers or the names. 01:49:04 PM
Q. Um-hmm. 01:49:09 PM
A. But as I mentioned earlier, I -- I 01:49:09 PM
did a search on the patent office web site and 01:49:11 PM
found several patents that were related, had -- 01:49:15 PM
had parts of them related to using 01:49:23 PM
immunoconjugates for restenosis. 01:49:25 PM
Q. Okay. And you were a co-inventor on 01:49:31 PM
those patents or an inventor on those patents? 01:49:33 PM
A. Some I was and some I wasn't. Some I 01:49:37 PM
was listed as an inventor, some I was not listed 01:49:45 PM
as an inventor. 01:49:47 PM
Q. Do you consider yourself an inventor 01:49:51 PM
of the ones in which you were not listed as an 01:49:53 PM
inventor? 01:49:56 PM
MR. NODINE: Objection -- 01:49:57 PM
MR. MELORO: Objection. 01:49:58 PM
MR. NODINE: -- vague, calls for 01:50:00 PM
speculation, lack of foundation. 01:50:01 PM
THE WITNESS: I'm not a patent 01:50:04 PM
attorney, so I can't say whether I should have 01:50:05 PM

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been or -- or whether legally I -- I should have 01:50:08 PM
been. 01:50:13 PM
(Whereupon, there was a discussion off the 01:51:00 PM
written record) 01:51:00 PM
Q. (By Mr. Timmons) Let me mark -- 01:51:02 PM
whoops. It was already marked as Klein Exhibit 01:51:03 PM
10, PCT U.S. 928220 patent application. If you 01:51:06 PM
could pass the extra one on to your counsel, 01:51:17 PM
please. 01:51:20 PM
Have you seen this document before? 01:51:25 PM
A. I have not seen this document in this 01:52:23 PM
form. As before, several of the -- the figures 01:52:28 PM
and tables with experimental data are ones 01:52:34 PM
that -- is data that I have seen, that I did see 01:52:43 PM
previous. 01:52:48 PM
Q. Okay. If you would turn to page 84 01:53:19 PM
of this document, please. 01:53:24 PM
A. Okay. 01:53:25 PM
Q. Could you read claim 1, please, to 01:53:26 PM
yourself. 01:53:28 PM
A. Okay. 01:53:54 PM
Q. Did you have any contribution to 01:53:56 PM
claim 1? 01:53:58 PM
MR. MELORO: Objection to form. 01:54:03 PM
THE WITNESS: The -- the methodology 01:54:06 PM

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and the -- the strategy described in claim 1 is 01:54:16 PM
consistent with the discussions that Larry Kunz 01:54:21 PM
and I had relating to this -- to the issue of 01:54:30 PM
restenosis in vascular smooth muscle cells. 01:54:34 PM
Q. (By Mr. Timmons) Do you consider 01:54:38 PM
yourself an inventor of claim 1 of this patent 01:54:38 PM
application? 01:54:41 PM
MR. NODINE: Objection, insofar as it 01:54:43 PM
calls for a legal conclusion. 01:54:44 PM
But you may answer, insofar as you 01:54:46 PM
know. 01:54:48 PM
THE WITNESS: As stated before, I -- 01:54:51 PM
I was involved in developing this -- intimately 01:54:53 PM
developing this idea and this strategy, but I 01:54:58 PM
can't specifically determine if I'm an inventor 01:55:03 PM
or not. 01:55:09 PM
Q. (By Mr. Timmons) Is that because 01:55:10 PM
you're not a patent attorney? 01:55:11 PM
A. Yes. 01:55:14 PM
Q. Okay. Do you have any understanding 01:55:15 PM
as to whether or not you're an inventor of claim 01:55:20 PM
1? 01:55:23 PM
MR. MELORO: Objection, asked and 01:55:25 PM
answered. 01:55:25 PM
THE WITNESS: This -- this claim 01:55:30 PM

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contains many ideas that Larry Kunz and I 01:55:32 PM
collectively developed in our -- in our 01:55:40 PM
combined -- in our collaboration and our -- our 01:55:45 PM
interactions as -- as co-investigators. 01:55:50 PM
Q. (By Mr. Timmons) Okay. If you would 01:55:56 PM
turn back to the first page, please. Do you 01:55:59 PM
see, under international filing date, that this 01:56:04 PM
was filed on September 25th, 1992, in the 01:56:07 PM
left-hand column? 01:56:11 PM
A. Yes. 01:56:14 PM
Q. Okay. And under inventor and 01:56:14 PM
inventor applicant, do you see that Dr. Kunz is 01:56:17 PM
the only listed inventor? 01:56:21 PM
A. Yes. 01:56:25 PM
Q. Do you know why you were not named as 01:56:25 PM
an inventor in PCT application U.S. 92/08220? 01:56:29 PM
A. No, I do not. 01:56:37 PM
Q. Did you ever have any discussions 01:56:38 PM
with Dr. Kunz as to whether or not you should be 01:56:39 PM
an inventor on this application? 01:56:42 PM
A. No. 01:56:46 PM
Q. This is a yes or no question. Did 01:56:50 PM
you have any discussion with your attorneys as 01:56:52 PM
to whether or not you should be named an 01:56:54 PM
inventor on the PCT application of Klein Exhibit 01:56:56 PM

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10? 01:57:00 PM
MR. NODINE: Objection, insofar as it 01:57:02 PM
calls for revealing attorney-client 01:57:04 PM
communications. 01:57:06 PM
You may answer the question only yes 01:57:07 PM
or no, but don't reveal the substance of any 01:57:08 PM
communications. 01:57:11 PM
THE WITNESS: No. 01:57:15 PM
Q. (By Mr. Timmons) Okay. Have you 01:57:17 PM
ever discussed with any representative of Boston 01:57:18 PM
Scientific whether or not should be a named 01:57:24 PM
inventor on this patent application of Klein 01:57:26 PM
Exhibit 10? 01:57:28 PM
A. To the best of my knowledge, no. 01:57:32 PM
Q. Let me give you, Dr. Anderson, a 01:59:01 PM
document that was previously marked as Kunz 01:59:06 PM
Exhibit 14. It's a two-page letter dated April 01:59:08 PM
15th, 1993, from Lucy Hicks to Debra Leith, 01:59:13 PM
NeoRx 10020 through 21. If you could just take 01:59:22 PM
a look at that and let me know if you've seen 01:59:32 PM
that before. 01:59:34 PM
A. Yes, I think I -- I have -- have seen 02:00:12 PM
this before. 02:00:19 PM
Q. Did you receive a copy of this at 02:00:19 PM
approximately April 15th, 1993? 02:00:21 PM

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A. I know that when I went back through 02:00:27 PM
my files to give everything to you for the 02:00:29 PM
subpoena, that -- that this was one of the 02:00:34 PM
documents in there. So I assume I must have 02:00:36 PM
received it at approximately that time. 02:00:39 PM
Q. And I just note for the record that 02:00:42 PM
Dr. Anderson is a -- a copy recipient on this 02:00:43 PM
letter. Do you see that? 02:00:47 PM
A. Yes. 02:00:49 PM
Q. Okay. Who was Lucy Hicks? 02:00:49 PM
MR. NODINE: Objection to form. 02:00:58 PM
THE WITNESS: Lucy Hicks worked at 02:01:00 PM
the UAB Research Foundation, and I don't know -- 02:01:03 PM
you know, her -- her title is here on the -- on 02:01:07 PM
the letter, but she was the -- the legal contact 02:01:12 PM
person that if I had any questions related to 02:01:17 PM
the NeoRx -- you know, anything that I was doing 02:01:23 PM
with NeoRx, I would usually send things to her. 02:01:27 PM
Q. (By Mr. Timmons) Okay. Let me just 02:01:38 PM
sort of do some housekeeping. The first patent 02:01:42 PM
application listed in the regards lines is -- in 02:01:47 PM
the reference line is the 767254 application. 02:01:52 PM
And I'll represent to you that is Klein Exhibit 02:01:55 PM
9 that we've looked at today. That's the -- 02:01:58 PM
that's that one, okay. 02:02:04 PM

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The next CIP file, this PCT, is filed 02:02:07 PM
September 25th, 1992. Do you understand that to 02:02:13 PM
be a reference to that PCT application we looked 02:02:17 PM
at earlier? 02:02:20 PM
MR. NODINE: Objection, lack of 02:02:24 PM
foundation. 02:02:25 PM
Q. (By Mr. Timmons) Klein Exhibit 10. 02:02:26 PM
A. So in -- in the memo here, this CIP 02:02:29 PM
filed as a PTC -- 02:02:32 PM
Q. Yes. 02:02:34 PM
A. -- that refers to this -- this PTC 02:02:34 PM
that we just looked at? 02:02:40 PM
Q. That's my question, yeah. 02:02:42 PM
MR. NODINE: Yeah, I believe -- to 02:02:44 PM
clarify, I believe that is your question. 02:02:45 PM
MR. TIMMONS: That's my question, 02:02:47 PM
yes. 02:02:48 PM
MR. NODINE: That's not a 02:02:48 PM
representation, right? 02:02:49 PM
MR. TIMMONS: Yes. 02:02:52 PM
THE WITNESS: I -- no, I -- until you 02:02:52 PM
just said that, I didn't know that this was the 02:02:54 PM
same as that. 02:02:56 PM
Q. (By Mr. Timmons) Okay. Let me give 02:03:00 PM
you, then, a copy of Klein Exhibit 11, which is 02:03:00 PM

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a file history for application 08/011,669, which 02:03:06 PM
was filed on January 28th, 1993, and ask you if 02:03:13 PM
you've seen that application before. 02:03:16 PM
That's one for your counsel. Why 02:03:24 PM
don't you give your counsel the one with the 02:03:25 PM
rubber band on it. The staples didn't go 02:03:27 PM
through so well. Sorry. 02:03:30 PM
MR. TIMMONS: Why don't -- why don't 02:03:48 PM
we -- while you're looking at that, why don't we 02:03:48 PM
change the tape. 02:03:49 PM
THE VIDEOGRAPHER: This marks the end 02:03:51 PM
of videotape number 2 in the deposition of Peter 02:03:51 PM
Anderson. We are going off the record, 2:03 02:03:54 PM
p.m. 02:03:58 PM
(Whereupon, there was a brief recess.) 02:06:07 PM
THE VIDEOGRAPHER: Here begins 02:06:12 PM
videotape -- excuse me. Here begins videotape 02:06:12 PM
number 3 in the deposition of Peter Anderson. 02:06:16 PM
We are back on the record, 2:06 p.m. 02:06:18 PM
Q. (By Mr. Timmons) I think there's a 02:06:24 PM
question on the record of whether or not you've 02:06:24 PM
ever seen this document before, but take what 02:06:26 PM
you need to do the reviewing. 02:06:27 PM
A. I have never seen this document 02:06:32 PM
before, this particular printing of the 02:06:37 PM

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document -- or this -- this format. 02:06:41 PM
Again, the -- the text, some of the 02:06:45 PM
tables and pictures are familiar to me and look 02:06:49 PM
like the -- the, you know, regular 8 and a half 02:06:57 PM
by 11 printed version that -- that NeoRx usually 02:07:05 PM
mail -- you know, sent to me in Birmingham. 02:07:10 PM
Q. (By Mr. Timmons) If you could turn 02:07:15 PM
to page 115 of the document. And if you would 02:07:21 PM
read claims 1 and 2 to yourself, please. 02:07:25 PM
A. Okay. 02:07:55 PM
Q. Did you have any contribution to 02:07:56 PM
what's disclosed in claims 1 and 2? 02:07:58 PM
MR. NODINE: Objection to form, vague 02:08:01 PM
and ambiguous. 02:08:04 PM
THE WITNESS: Yes. 02:08:07 PM
Q. (By Mr. Timmons) And what was your 02:08:08 PM
contribution? 02:08:09 PM
A. The specific -- again, through our 02:08:18 PM
discussions -- my discussions with Dr. Kunz, we 02:08:24 PM
had discussed and formulated an approach of 02:08:27 PM
using cytostatic agents to inhibit 02:08:34 PM
proliferation, smooth muscle cell proliferation, 02:08:39 PM
contraction, and migration. 02:08:44 PM
And we had also discussed previously 02:08:50 PM
the approach or the idea of using binding 02:08:51 PM

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peptides, immunopeptides, to facilitate that 02:08:57 PM
process. 02:09:02 PM
Q. The first claim doesn't talk about 02:09:06 PM
the binding peptides or proteins, correct? 02:09:08 PM
A. Correct. 02:09:11 PM
Q. Your -- what was your contribution to 02:09:13 PM
claim 1 between you and Dr. Kunz? 02:09:15 PM
MR. MELORO: Objection, vague and 02:09:22 PM
ambiguous, lack of foundation. 02:09:23 PM
MR. NODINE: And for clarity, you -- 02:09:26 PM
you're talking about what was originally 02:09:26 PM
denominated claim 1? 02:09:28 PM
MR. TIMMONS: What claim 1 is here on 02:09:31 PM
page 115. 02:09:32 PM
MR. NODINE: Right. 02:09:34 PM
THE WITNESS: Dr. Kunz and I had 02:09:43 PM
discussed using cytostatic agents to inhibit the 02:09:44 PM
pathologic activities associated with 02:09:54 PM
restenosis. 02:09:59 PM
So claim 1, pretty much all -- all 02:10:08 PM
components of claim 1 were things that we had 02:10:12 PM
discussed. 02:10:15 PM
Q. (By Mr. Timmons) Okay. And I think 02:10:17 PM
that you said that prior to your discussions 02:10:27 PM
with Dr. Kunz, you did not believe that he had 02:10:31 PM

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any knowledge regarding restenosis at that 02:10:35 PM
point, in December of 1990; is that correct? 02:10:43 PM
A. Correct. 02:10:46 PM
MR. NODINE: Objection to the 02:10:47 PM
recharacterization of prior testimony. 02:10:47 PM
Q. (By Mr. Timmons) Okay. If you would 02:10:49 PM
put this document aside for one second and then 02:10:50 PM
turn back to the letter, please. Don't -- don't 02:10:53 PM
let it go too far because I'm going to have a 02:10:56 PM
question about it. 02:10:59 PM
The third -- in the -- the reference 02:11:01 PM
line, it says USCIP of CIP filed January 28th, 02:11:02 PM
1993, inventors Kunz and Klein. Do you know if 02:11:08 PM
that -- that line is a reference to the 02:11:11 PM
application 011669 of Klein Exhibit 11? 02:11:14 PM
A. Do I know now or -- or did I know 02:11:26 PM
when I got this memo? 02:11:27 PM
Q. Did you know when you got the memo? 02:11:29 PM
A. When I got the memo, I had a copy -- 02:11:34 PM
or knew of a -- an application that I can't say 02:11:38 PM
for certain is this application, but I knew of 02:11:48 PM
an application that was being filed. 02:11:52 PM
Q. Okay. Do you know now that this 02:11:55 PM
third line under the re is this 669 application, 02:11:56 PM
Klein Exhibit 11? 02:12:03 PM

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A. Now that you've told me, and they 02:12:08 PM
both have the same date. 02:12:10 PM
Q. Okay. 02:12:11 PM
A. I couldn't say for certain that -- 02:12:12 PM
that this is the actual document that I reviewed 02:12:14 PM
back in 1993. 02:12:19 PM
Q. If I could ask you, then, to look at 02:12:23 PM
the letter, the second paragraph, if you could 02:12:25 PM
read the first sentence to yourself and -- and 02:12:30 PM
whatever else you need to read, but I'm going to 02:12:32 PM
ask you some questions about the first sentence 02:12:35 PM
in the second paragraph. 02:12:37 PM
A. Okay. 02:13:04 PM
Q. Okay. And my first question will be 02:13:04 PM
whether or not you ever saw a preliminary 02:13:06 PM
disclosure of an invention submitted by Dr. Kunz 02:13:10 PM
on January 16th, 1991? 02:13:13 PM
A. Let's see. We had discussed over the 02:13:28 PM
telephone several issues, and I'm not exactly 02:13:34 PM
sure what -- you know, what preliminary 02:13:43 PM
disclosure of invention -- you know, what 02:13:48 PM
document this is referring to. I'd have to, you 02:13:51 PM
know, be shown the document to be sure. 02:13:54 PM
Q. Okay. 02:14:01 PM
MR. TIMMONS: Larry, this is directed 02:14:01 PM

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to you. I -- I'm not sure if this was -- this 02:14:02 PM
preliminary disclosure of invention was in the 02:14:04 PM
UAB files and you're just withholding it as 02:14:07 PM
privileged or whether or not it's not been 02:14:10 PM
there. But one way or another, I'd request 02:14:11 PM
either that it be provided to us or some kind of 02:14:13 PM
log saying that we've got it and we'd like to -- 02:14:16 PM
and a claimed privilege on that, please. 02:14:19 PM
MR. NODINE: All right. 02:14:23 PM
Q. (By Mr. Timmons) Let me ask you 02:14:24 PM
about the second clause in that sentence, where 02:14:24 PM
it says, "Dr. Anderson conceived the use of 02:14:26 PM
NeoRx immunoconjugates as a form of 02:14:29 PM
administering therapeutic agents to suppress the 02:14:33 PM
vascular smooth muscle proliferation as a result 02:14:36 PM
of angioplasty trauma." Do you agree with that 02:14:40 PM
statement? 02:14:43 PM
MR. NODINE: Objection to the form, 02:14:44 PM
vague and ambiguous. 02:14:45 PM
THE WITNESS: The sentence was 02:14:48 PM
written by -- by Lucy Hicks. I would agree that 02:14:49 PM
Dr. Kunz and myself collectively discussed this 02:14:55 PM
issue. And, you know, aspects of it, I was more 02:15:05 PM
familiar with, and other aspects, he was more 02:15:09 PM
familiar with. And together we formulated 02:15:13 PM

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the -- the idea that is somewhat incompletely 02:15:16 PM
addressed by this sentence. 02:15:22 PM
Q. Hopefully the next sentence I ask you 02:15:25 PM
about will be more complete. If you turn to the 02:15:28 PM
next page. 02:15:30 PM
A. Okay. 02:15:31 PM
Q. And the first sentence reads, "In 02:15:31 PM
conclusion, Dr. Anderson, in conjunction with 02:15:34 PM
Dr. Kunz, were the persons who conceived the 02:15:36 PM
invention of using NeoRx antibodies, either 02:15:39 PM
coupled directly to a therapeutic agent or bound 02:15:43 PM
to the time release formulation of therapeutic 02:15:46 PM
agent to target the therapeutic agent to the 02:15:48 PM
site of vascular trauma or disease to inhibit 02:15:52 PM
restenosis." 02:15:57 PM
My question is: Do you agree with 02:15:59 PM
that statement? 02:16:00 PM
MR. NODINE: Objection, vague and 02:16:02 PM
ambiguous. 02:16:02 PM
THE WITNESS: Again, since -- since I 02:16:04 PM
didn't write it, I don't -- I may not have said 02:16:05 PM
it exactly that way, but in general, that -- 02:16:08 PM
I -- I'm in agreement with the general gestalt 02:16:13 PM
of that sentence. 02:16:15 PM
Q. (By Mr. Timmons) If you could read 02:16:19 PM

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the last paragraph to yourself, I would like to 02:16:19 PM
ask you a couple questions about that. 02:16:22 PM
A. Okay. 02:16:47 PM
Q. Did you participate in any 02:16:48 PM
discussions between UAB Research Foundation and 02:16:49 PM
NeoRx as to whether or not you should be 02:16:53 PM
included as an inventor on subsequently filed 02:16:55 PM
applications, patent applications 2 and 3, as 02:16:59 PM
referenced above? 02:17:01 PM
A. I don't recall if I did -- if I did 02:17:08 PM
have any discussions with NeoRx related to these 02:17:13 PM
specific applications. 02:17:18 PM
Q. Okay. Do you know whether or not you 02:17:21 PM
were ever added as an inventor on the patent 02:17:23 PM
applications 2 and 3, as referenced before? 02:17:26 PM
A. No. 02:17:32 PM
Q. You don't know? 02:17:34 PM
A. I don't know. 02:17:35 PM
Q. Okay. Let me provide you, 02:17:36 PM
Dr. Anderson, with a document that was 02:18:07 PM
previously marked as Kunz Exhibit 15, that's a 02:18:10 PM
multi-page document. After the fax cover sheet, 02:18:14 PM
there's a letter from a Robert Schroff to 02:18:20 PM
Kenneth Roozen, June 14th, 1993, and you're 02:18:23 PM
listed as a CC, NeoRx 100022 through 25. And my 02:18:29 PM

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question will be, have you ever seen that 02:18:46 PM
document before? 02:18:49 PM
A. I don't recall ever having seen this 02:19:16 PM
document. 02:19:17 PM
Q. Do you have any reason to believe you 02:19:20 PM
didn't receive a copy of this on June -- on or 02:19:22 PM
about June 14th, 1993? 02:19:25 PM
MR. NODINE: Objection, lack of 02:19:27 PM
foundation. 02:19:28 PM
MR. MELORO: Object to the ambiguity 02:19:31 PM
as to whether you're referring to the document 02:19:32 PM
with the handwritten notations or not. 02:19:34 PM
THE WITNESS: If -- if I did receive 02:19:46 PM
a carbon -- did receive a copy of the original 02:19:48 PM
memo, I didn't keep it in my files, so -- so I 02:19:52 PM
can't -- I can't answer -- I can't recall if 15 02:20:03 PM
years ago I got this memo or not -- 02:20:08 PM
Q. (By Mr. Timmons) Okay. 02:20:11 PM
A. -- at this point in time. 02:20:13 PM
Q. All right. If you would read the 02:20:18 PM
first paragraph to yourself, I would like to ask 02:20:21 PM
you some questions about it. 02:20:21 PM
A. Okay. 02:20:46 PM
Q. Did you participate in discussions 02:20:47 PM
with Lucy Hicks and NeoRx regarding whether you 02:20:49 PM

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should remain as an inventor on recent patent applications? 02:20:55 PM 02:20:58 PM
A. Let's see. Yes, I participated in discussions, Lucy Hicks and I had a discussion. 02:21:06 PM 02:21:15 PM 02:21:21 PM
MR. NODINE: Don't -- just interrupt for a second. Lucy Hicks is counsel, attorney-client privilege. Don't reveal the -- the discussions between you and Ms. Hicks that were only between the two of you. 02:21:23 PM 02:21:24 PM 02:21:26 PM 02:21:30 PM 02:21:34 PM
If there were discussions involving a third-party with NeoRx, then you may reveal those, but otherwise, maintain the privilege as to your confidential communications with Ms. Hicks. 02:21:37 PM 02:21:39 PM 02:21:44 PM 02:21:47 PM 02:21:49 PM
THE WITNESS: Okay. Lucy Hicks and I had a conference call with the NeoRx patent office at -- at some point in time. I don't know if it was '93 or -- I don't know when it was. I didn't -- I don't have a record of that call. 02:21:52 PM 02:21:56 PM 02:22:03 PM 02:22:06 PM 02:22:12 PM 02:22:14 PM
Q. (By Mr. Timmons) And was this -- the issue of whether or not you should be an inventor on pending patent applications at the time, was that the -- at least part of the 02:22:16 PM 02:22:17 PM 02:22:19 PM 02:22:22 PM

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discussion? 02:22:24 PM
A. That was the -- the impetus for the call, yes. 02:22:25 PM 02:22:29 PM
Q. What was your position as to whether or not you should be an inventor on those pending patent applications? 02:22:32 PM 02:22:34 PM 02:22:37 PM
MR. NODINE: Objection, lack of foundation, vague and ambiguous. 02:22:39 PM 02:22:39 PM
THE WITNESS: I thought that I should be included as a patent -- a co-patenter on at least -- at least the ones that -- that I was aware of and that had come to my attention, the patents that -- that had come to my attention. 02:22:46 PM 02:22:47 PM 02:22:53 PM 02:22:56 PM 02:22:59 PM
Q. (By Mr. Timmons) Why did you feel you were a -- a co-inventor of those applications? 02:23:02 PM 02:23:03 PM 02:23:07 PM
MR. NODINE: Objection, vague. 02:23:09 PM
THE WITNESS: Since I don't have the -- the applications in front of me that -- that prompted this, I can just go by memory, and that is that -- that the -- the claims or the approaches that were -- you know, to my untrained eye, the approaches that were described in these patent applications were identical to or -- or very similar to the 02:23:14 PM 02:23:14 PM 02:23:19 PM 02:23:26 PM 02:23:30 PM 02:23:37 PM 02:23:40 PM 02:23:43 PM

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approaches that I had -- had developed in collaboration with Dr. Kunz. 02:23:49 PM 02:23:53 PM
Q. (By Mr. Timmons) Okay. The three applications that we have looked at today, Klein Exhibit 11, Klein Exhibit 9, and the PCT application, Klein Exhibit 10, were you aware of any other applications prior to June 14th, 1993, that had been filed on behalf of NeoRx on these -- this work that you had done with Dr. Kunz? 02:23:56 PM 02:23:58 PM 02:24:01 PM 02:24:05 PM 02:24:13 PM 02:24:17 PM 02:24:20 PM 02:24:22 PM
A. NeoRx would routinely send me applications for me to review. I don't -- I didn't know the numbering scheme, and I don't know the -- the sequence of -- of when exactly they were sent to me. But I do know of applications that were sent to me for review and proofreading and -- and, you know, editing. So any that -- that weren't sent to me, I wasn't aware of those. 02:24:32 PM 02:24:34 PM 02:24:41 PM 02:24:44 PM 02:24:47 PM 02:24:51 PM 02:24:54 PM 02:25:00 PM 02:25:03 PM
Q. And based on what you had read in the proofreading of drafts, you came to the conclusion that you should have been a co-inventor on those patent applications, correct? 02:25:04 PM 02:25:07 PM 02:25:09 PM 02:25:11 PM 02:25:14 PM
A. Correct. 02:25:14 PM

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Q. Okay. If you could -- I'm sorry, we're going to flip around a little bit. Go back to the -- the June 14th letter. 02:25:15 PM 02:25:19 PM 02:25:21 PM
A. That one right there? 02:25:24 PM
Q. Yes, Kunz Exhibit 15, the page -- the letter, please. And the second paragraph states, in the second sentence, that "we are no longer pursuing an immunoconjugate approach." Were you aware that as of June 14th, 1993, that NeoRx was no longer pursuing an immunoconjugate approach? 02:25:26 PM 02:25:30 PM 02:25:32 PM 02:25:39 PM 02:25:44 PM 02:25:48 PM 02:25:56 PM
A. No, I was not. 02:25:57 PM
Q. The next sentence states that "However, we have continued to build on the initial concepts, and Pete has continued to be a valuable collaborator in our studies." 02:25:57 PM 02:25:59 PM 02:26:01 PM 02:26:04 PM
What work did you do with NeoRx that -- that did not include the immunoconjugate approach? 02:26:07 PM 02:26:08 PM 02:26:17 PM
MR. NODINE: Objection, vague, ambiguous, lack of foundation. 02:26:18 PM 02:26:19 PM
MR. MELORO: Work at any time or prior to this letter? 02:26:23 PM 02:26:23 PM
MR. TIMMONS: Any time. 02:26:25 PM
THE WITNESS: Can you repeat the 02:26:29 PM

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question? 02:26:29 PM
Q. (By Mr. Timmons) Yeah. What work, 02:26:30 PM
other than the immunoconjugate approach, did you 02:26:33 PM
do with NeoRx? 02:26:37 PM
MR. NODINE: Same objection. 02:26:40 PM
MR. MELORO: Overbroad, vague. 02:26:42 PM
THE WITNESS: At -- from the very 02:26:45 PM
beginning, all of the discussions that Dr. Kunz 02:26:49 PM
and I had which -- pertaining to this area 02:27:04 PM
related to all aspects of preventing restenosis. 02:27:09 PM
So from my perspective as -- you 02:27:16 PM
know, in working on these projects, none of the 02:27:22 PM
previous applications were solely or limited to 02:27:26 PM
just immunoconjugate. The -- the use of the 02:27:30 PM
drugs and -- and the whole approach was what I 02:27:38 PM
felt that -- that Dr. Kunz and I had -- had 02:27:46 PM
developed. 02:27:51 PM
Q. (By Mr. Timmons) What was the 02:27:55 PM
approach that you and Dr. Kunz had developed? 02:27:56 PM
MR. MELORO: Objection to form. 02:28:01 PM
THE WITNESS: The approach was the 02:28:06 PM
use of cytostatic agents in formulations or -- 02:28:08 PM
and using techniques that would direct those 02:28:21 PM
agents to the site of injury, as a -- to the 02:28:26 PM
very broad or very limited description of our -- 02:28:39 PM

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of our scope. 02:28:42 PM
Q. (By Mr. Timmons) What techniques did 02:28:43 PM
you use or -- to direct the agents to the site 02:28:45 PM
of injury? 02:28:51 PM
MR. MELORO: Objection, ambiguous. 02:28:55 PM
THE WITNESS: We -- we proposed or we 02:29:01 PM
discussed a variety of techniques and 02:29:05 PM
methodologies to direct the compounds to the 02:29:07 PM
site where -- at high enough concentrations 02:29:14 PM
where they would be -- we -- we thought they 02:29:18 PM
would be efficacious. 02:29:23 PM
Q. (By Mr. Timmons) What were the 02:29:25 PM
proposed techniques that you discussed with 02:29:25 PM
Dr. Kunz? 02:29:27 PM
A. We talked about the whole variety of 02:29:29 PM
infusion catheter-type techniques. At the time, 02:29:32 PM
there were, and there still are, a wide, you 02:29:40 PM
know, broad range of -- of different techniques 02:29:44 PM
for doing that. 02:29:46 PM
We discussed and proposed 02:29:49 PM
formulations of the compounds which -- which 02:29:52 PM
would -- would -- which would paint or would 02:30:04 PM
distribute the -- the drug to the site of injury 02:30:10 PM
in a format that would -- you know, so that -- 02:30:14 PM
so that it would be -- would stick around for a 02:30:17 PM

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while and be a sustained release type of -- of 02:30:19 PM
treatment modality. 02:30:23 PM
You know, basically, a 02:30:29 PM
variety and then -- and again, and in addition, 02:30:30 PM
one of those arms or approaches included using 02:30:34 PM
immunoconjugates to direct them to the site 02:30:38 PM
and -- and to get them to stay there and 02:30:42 PM
concentrate there. 02:30:45 PM
Q. Did you ever use stents as the 02:30:50 PM
delivery technique with Dr. Kunz at NeoRx? 02:30:54 PM
MR. MELORO: Objection to form. 02:31:00 PM
THE WITNESS: Delivery technique 02:31:04 PM
for -- for what, for any compound in particular 02:31:04 PM
or -- 02:31:08 PM
Q. (By Mr. Timmons) With these 02:31:09 PM
cytostatic agents. 02:31:09 PM
A. No, I never performed or -- either -- 02:31:12 PM
either for NeoRx or, to my knowledge, as part of 02:31:18 PM
our collaborations, we never did do any stent 02:31:24 PM
studies with any cytostatic agents. 02:31:29 PM
Q. If you would turn to -- what's the 02:32:03 PM
best way to describe this -- page 2 of the 02:32:07 PM
letter. 02:32:09 PM
A. Okay. 02:32:09 PM
Q. There's a paragraph that starts, "The 02:32:10 PM

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agreement also calls for a 1 percent royalty." 02:32:11 PM
Would you read that paragraph to yourself, and I 02:32:15 PM
would like to ask you some questions about it, 02:32:17 PM
please. 02:32:19 PM
A. Okay. 02:32:43 PM
Q. Okay. Was the scope of the agreement 02:32:44 PM
modified, to your knowledge? 02:32:49 PM
A. Not to my knowledge. 02:32:54 PM
Q. Okay. 02:32:56 PM
A. Well, let me -- let me ask, the 02:32:57 PM
agreement between NeoRx and UAB Research 02:33:02 PM
Foundation? 02:33:08 PM
Q. That's the agreement I -- 02:33:08 PM
A. Okay. 02:33:09 PM
Q. -- I'm asking about, the -- 02:33:09 PM
A. Yeah. Okay. 02:33:10 PM
Q. -- agreement that I've marked as 02:33:10 PM
Anderson Exhibit 8. Do you know if that 02:33:11 PM
agreement was modified at all? 02:33:13 PM
A. I didn't have any knowledge of that. 02:33:19 PM
I wasn't involved in any of those discussions. 02:33:21 PM
Q. Okay. Let me just ask you, then, 02:33:23 PM
if -- this is something that's been -- well, 02:33:38 PM
it's UAB, too. Let me -- let me show you 02:33:55 PM
Exhibit 16 from the Kunz deposition, September 02:33:57 PM

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1 1, 1993, agreement between NeoRx and the UAB 02:34:03 PM
2 Research Foundation, and ask you if you've seen 02:34:09 PM
3 that document before. That's Kunz Exhibit 16, 02:34:11 PM
4 NeoRx 100026 through 37. 02:34:14 PM
5 A. And what was the question? 02:35:19 PM
6 Q. Whether or not you've ever seen that 02:35:21 PM
7 document before. 02:35:21 PM
8 A. I don't recall ever seeing this 02:35:23 PM
9 document before. 02:35:24 PM
10 Q. Okay. Why don't you put that aside, 02:35:25 PM
11 then. 02:35:28 PM
12 MR. MELORO: We've been going about 02:35:33 PM
13 an hour. When you reach a convenient point -- 02:35:33 PM
14 MR. TIMMONS: I would like to go a 02:35:37 PM
15 little bit longer this time, though. We started 02:35:37 PM
16 a little bit late. If we could go another ten 02:35:39 PM
17 minutes, I would appreciate it, if that's 02:35:39 PM
18 okay with -- 02:35:39 PM
19 MR. MELORO: I'd ask Mr. Nodine and 02:35:43 PM
20 the witness. 02:35:45 PM
21 MR. NODINE: Ten minutes is fine with 02:35:46 PM
22 me. Do you feel like you need a break, or 02:35:47 PM
23 are -- 02:35:49 PM
24 THE WITNESS: No, I'm -- 02:35:49 PM
25 MR. NODINE: -- you all right? 02:35:49 PM

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1 MR. TIMMONS: I -- I would appreciate 02:35:49 PM
2 it. Sometimes the breaks have been sort of 02:35:50 PM
3 extended today. And if you would give me that 02:35:51 PM
4 courtesy, I would appreciate it. Thank you. 02:35:53 PM
5 Let me mark as Anderson -- Anderson 02:36:04 PM
6 Exhibit 9 a cover letter and an assignment, June 02:36:11 PM
7 23, 1993, to Peter Anderson from Sue Lintott, 02:36:17 PM
8 UAB 985 through 989. 02:36:25 PM
9 (WHEREUPON, Anderson Exhibit 9 was marked for 02:36:43 PM
10 identification.) 02:36:30 PM
11 Q. (By Mr. Timmons) My question is, 02:36:43 PM
12 Dr. Anderson, have you seen this document 02:36:43 PM
13 before? 02:36:45 PM
14 A. Yes. 02:37:05 PM
15 Q. And what is it? 02:37:05 PM
16 A. The declaration of power of attorney? 02:37:12 PM
17 Q. Yes. 02:37:18 PM
18 A. It's -- it's a declaration of the 02:37:29 PM
19 power of attorney. 02:37:31 PM
20 Q. For one of the applications that was 02:37:32 PM
21 filed on your behalf at -- at -- by NeoRx? 02:37:33 PM
22 A. It looks that way, although, again, 02:37:42 PM
23 the -- the numbering system doesn't mean 02:37:44 PM
24 anything to me. 02:37:47 PM
25 Q. Okay. And that's your signature on 02:37:48 PM

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1 the fourth page of the document? 02:37:52 PM
2 A. Yes. 02:37:55 PM
3 Q. And this -- I guess it would be the 02:38:03 PM
4 second paragraph, starting "we have reviewed and 02:38:09 PM
5 understand the contents of," do you see that? 02:38:11 PM
6 A. Oh, yes. 02:38:15 PM
7 Q. It states that, "We have reviewed and 02:38:16 PM
8 understand the contents of the specification and 02:38:19 PM
9 claims forming part of an application for U.S. 02:38:21 PM
10 letters patent entitled therapeutic inhibitor of 02:38:24 PM
11 vascular smooth muscle cells, which was filed on 02:38:28 PM
12 May 19th, 1993, and assigned U.S. patent 02:38:31 PM
13 application serial number 08/062,451." Do you 02:38:34 PM
14 see that? 02:38:39 PM
15 A. Yes. 02:38:40 PM
16 Q. And did you review this patent 02:38:40 PM
17 application, 062,451, prior to your signing this 02:38:43 PM
18 declaration? 02:38:50 PM
19 A. At this -- I don't recall. 02:38:56 PM
20 Q. Would you have signed it if you had 02:39:00 PM
21 not reviewed and understood the contents of that 02:39:01 PM
22 application? 02:39:04 PM
23 A. I can't speculate at this point, you 02:39:08 PM
24 know, what I would have done back then. I 02:39:10 PM
25 was -- after the -- the agreement between UAB 02:39:16 PM

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1 Research Foundation and NeoRx, I was told by our 02:39:23 PM
2 research foundation that we are working with 02:39:28 PM
3 NeoRx now, so they're -- they're on our side. 02:39:33 PM
4 We're -- we're trying to move these things 02:39:36 PM
5 forward. 02:39:39 PM
6 So I can't say that they said this 02:39:42 PM
7 word for word, but the implication was that when 02:39:46 PM
8 they send you stuff to sign related to these 02:39:50 PM
9 patents, go ahead and sign them, it's okay for 02:39:53 PM
10 you to sign them because we're partners now. 02:39:58 PM
11 Q. Okay. Is there any reason to believe 02:40:00 PM
12 that you didn't review and understand that 02:40:02 PM
13 application when you signed this? 02:40:03 PM
14 A. No, I -- I assume I did. I -- I 02:40:05 PM
15 assumed I would have read it or at least looked 02:40:07 PM
16 over it or been aware of it before I signed it. 02:40:09 PM
17 Q. Okay. 02:40:19 PM
18 MR. TIMMONS: Let me mark as Anderson 02:40:30 PM
19 Exhibit 10 a cover letter dated November 1st, 02:40:34 PM
20 1994, from Sue Lintott, again, to Dr. Anderson, 02:40:37 PM
21 UAB 1081 through 1084. 02:40:43 PM
22 (WHEREUPON, Anderson Exhibit 10 was marked for 02:41:01 PM
23 identification.) 02:41:01 PM
24 Q. (By Mr. Timmons) Do you recognize 02:41:05 PM
25 the assignment that's attached to this cover 02:41:05 PM

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letter? 02:41:08 PM
A. By assignment, you mean the -- the 02:41:10 PM
specific patent it's referring to? 02:41:20 PM
Q. Where it says "assignment," the 02:41:22 PM
document pages UAB 1082 through 1084. 02:41:24 PM
A. Yes. 02:41:36 PM
Q. Is this an assignment of your rights 02:41:37 PM
in this patent application, the 08/062,451, to 02:41:39 PM
NeoRx Corporation? 02:41:47 PM
MR. NODINE: Objection, insofar as it 02:41:50 PM
calls for a legal conclusion. 02:41:52 PM
THE WITNESS: I -- I don't know. 02:42:02 PM
Q. (By Mr. Timmons) Okay. 02:42:03 PM
A. I'd have to say I don't know. 02:42:04 PM
Q. Well, let's -- let's just establish, 02:42:06 PM
that's your signature on the last page? 02:42:07 PM
A. Yes. 02:42:08 PM
Q. Okay. 02:42:09 PM
A. So, yes, I signed this. 02:42:10 PM
Q. Okay. And let's walk through it a 02:42:12 PM
little bit, then. 02:42:13 PM
Do you see where it says, "Whereas, 02:42:15 PM
we," and then it lists a number of names in the 02:42:16 PM
beginning, and you're listed as the last name? 02:42:18 PM
A. Yes. 02:42:21 PM

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Q. Okay. Then it says, "hereinafter 02:42:21 PM
referred to as the assignors." Do you see 02:42:23 PM
that? 02:42:29 PM
A. Yes. 02:42:29 PM
Q. So you're one of the assignors. 02:42:29 PM
Okay. And, then the next paragraph starts out, 02:42:31 PM
"Whereas, NeoRx Corporation is referred to as 02:42:33 PM
the assignee"? 02:42:35 PM
A. (Nods head affirmatively.) 02:42:38 PM
Q. Do you see that? 02:42:38 PM
A. Yes. 02:42:40 PM
Q. Okay. And now, the last paragraph 02:42:40 PM
states that, "Now, therefore, assignors hereby 02:42:42 PM
sell, assign, and transfer unto said assignee 02:42:45 PM
the full and exclusive right, title, and 02:42:48 PM
interest in and to said invention for the United 02:42:50 PM
States of America," and it goes on for another 02:42:53 PM
paragraph about that. 02:42:56 PM
Do you understand that you, as an 02:42:57 PM
assignor, was assigning your rights in the 451 02:42:58 PM
application to NeoRx? 02:43:04 PM
MR. NODINE: Same objection. 02:43:09 PM
THE WITNESS: I can't, at this point 02:43:11 PM
in time, recount exactly what I thought when I 02:43:16 PM
signed this. But again, you know, if -- when 02:43:19 PM

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NeoRx sent me -- NeoRx legal office sent me 02:43:22 PM
something to sign, said we need you to sign this 02:43:29 PM
in relation to, you know, our patents, meaning 02:43:32 PM
the UAB/NeoRx patents, I signed it and sent it 02:43:35 PM
back. 02:43:41 PM
Q. (By Mr. Timmons) Could you pull out 02:43:45 PM
Kunz 11, the assignment from yourself to UAB, 02:43:46 PM
and keep -- keep this new assignment out with 02:43:49 PM
you also. 02:43:56 PM
Now, Kunz 11 is an assignment -- 02:44:07 PM
yeah, exactly -- 02:44:09 PM
A. Okay. 02:44:10 PM
Q. -- from yourself to UAB of the first 02:44:10 PM
application, correct? 02:44:12 PM
A. Oh, what -- which -- what are you 02:44:18 PM
referring to as the first application? 02:44:19 PM
Q. The application that was filed on 02:44:21 PM
September 27th, 1991, that named you and 02:44:22 PM
Dr. Kunz as a co-inventor. Do you remember that 02:44:25 PM
one? It's -- it's Klein Exhibit 9. Yeah, 02:44:30 PM
exactly, that one right there. 02:44:40 PM
A. Okay. 02:44:41 PM
Q. Do you recognize Kunz Exhibit 11 as 02:44:42 PM
an assignment of that application from yourself 02:44:44 PM
to -- to the UAB foundation? 02:44:45 PM

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A. As we discussed before, I remember 02:45:00 PM
signing this, this assignment. 02:45:02 PM
Q. Okay. Kunz Exhibit 11? 02:45:06 PM
A. Yes. 02:45:08 PM
Q. Okay. And do you recognize it as an 02:45:09 PM
assignment from yourself -- of your rights from 02:45:10 PM
yourself to UAB Research Foundation? 02:45:13 PM
A. Yes. 02:45:16 PM
Q. Okay. Did you no longer have an 02:45:18 PM
obligation to assign your rights to the UAB 02:45:20 PM
Research Foundation as of November 1st, 1994, 02:45:24 PM
when you assigned your rights to NeoRx in the 02:45:27 PM
subsequent application? 02:45:30 PM
MR. NODINE: Objection, calls for a 02:45:32 PM
legal conclusion. 02:45:33 PM
THE WITNESS: I had -- let's see. 02:45:42 PM
Repeat the question. 02:45:46 PM
(Whereupon, the record was read by the court 02:45:18 PM
reporter as follows: 02:45:49 PM
"QUESTION: Did you no longer have an 02:45:18 PM
obligation to assign your rights to the UAB 02:45:20 PM
Research Foundation as of November 1st, 1994, 02:45:24 PM
when you assigned your rights to NeoRx in the 02:45:27 PM
subsequent application?") 02:45:30 PM
THE WITNESS: To my knowledge, I was 02:46:09 PM

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under the same obligations as I was previously. 02:46:10 PM
Q. (By Mr. Timmons) Okay. Then why did 02:46:17 PM
you assign your rights in the application, the 02:46:18 PM
451 application, to NeoRx and not to the UAB 02:46:26 PM
Research Foundation in November 1994? 02:46:32 PM
MR. NODINE: Objection, insofar as it 02:46:35 PM
calls for a legal conclusion. 02:46:36 PM
THE WITNESS: As I stated previously, 02:46:40 PM
since UAB Research Foundation and NeoRx had an 02:46:41 PM
agreement and I had been instructed or -- or 02:46:51 PM
had -- I -- I interpreted the instruction from 02:46:54 PM
the UAB Research Foundation was to cooperate and 02:46:57 PM
sign materials that were sent to me by NeoRx. 02:47:02 PM
Q. (By Mr. Timmons) Did you understand 02:47:10 PM
that NeoRx had a license, under the work you 02:47:12 PM
were doing with Dr. Kunz and NeoRx, from UAB at 02:47:15 PM
the time? 02:47:20 PM
A. I understood that there was an 02:47:22 PM
agreement. The way it was described to me was 02:47:24 PM
that UAB Research Foundation and NeoRx have 02:47:27 PM
signed an agreement. So I basically was told to 02:47:33 PM
go into the laboratory and try and develop this 02:47:39 PM
idea that you and Dr. Kunz have -- have come up 02:47:43 PM
with. 02:47:47 PM
So I -- nobody ever discussed with me 02:47:48 PM

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any of the, you know, legal ramifications of 02:47:50 PM
what I should or shouldn't do, other than to say 02:47:57 PM
cooperate with them because we're partners now. 02:48:00 PM
Q. Okay. And you signed this assignment 02:48:04 PM
on November 7th, 1994, pursuant to those 02:48:09 PM
discussions? 02:48:13 PM
A. Correct. When -- you know, when I 02:48:15 PM
signed this, I thought -- or I -- you know, I 02:48:17 PM
must have thought at the time, I can't say 02:48:21 PM
exactly what I thought at the time 15 years 02:48:24 PM
later, but -- or ten years later, but I was 02:48:26 PM
under the impression at that point that since 02:48:29 PM
we're partners, just sign what they send you 02:48:34 PM
because then that will help our research project 02:48:36 PM
move forward. 02:48:39 PM
Q. Okay. 02:48:40 PM
MR. TIMMONS: This as good a time as 02:48:42 PM
any for a break. 02:48:43 PM
THE VIDEOGRAPHER: We are going off 02:48:45 PM
the record, 2:48 p.m. 02:48:45 PM
(Whereupon, there was a brief recess.) 03:03:30 PM
THE VIDEOGRAPHER: We are back on the 03:03:30 PM
record, 3:03 p.m. 03:03:31 PM
Q. (By Mr. Timmons) Dr. Anderson, I've 03:03:35 PM
asked you to look at Anderson Exhibit 10, and my 03:03:35 PM

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question is -- it's addressed to you at home. 03:03:38 PM
Is that where NeoRx sent you correspondence on 03:03:41 PM
the usual basis with regard to these patent 03:03:45 PM
applications? 03:03:47 PM
A. I don't recall. I know I got them at 03:03:51 PM
work. I -- I don't recall if -- if I got these 03:03:55 PM
at home. 03:04:02 PM
Q. When you received documents from 03:04:04 PM
NeoRx that you signed and sent back to them, did 03:04:06 PM
you take every single one into the legal 03:04:09 PM
department or the patent management department 03:04:14 PM
at the UAB Research Foundation to say, hey, I -- 03:04:17 PM
you know, I want to get your approval, or did 03:04:20 PM
you just sign them and send them back? 03:04:22 PM
A. I usually just signed them and sent 03:04:27 PM
them back. 03:04:30 PM
Q. Do you remember what happened with 03:04:31 PM
this particular assignment, whether or not you 03:04:33 PM
ran this past the UAB Research Foundation 03:04:36 PM
management department before you signed it? 03:04:38 PM
A. I don't recall specifically whether I 03:04:41 PM
did or not. 03:04:42 PM
Q. Okay. Keep -- keep that out, I'm 03:04:45 PM
going to need you to compare that to another 03:05:03 PM
document, so... 03:05:05 PM

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Let me mark, as Anderson Exhibit 11, 03:05:06 PM
another assignment from Drs. Kunz, Klein, Reno, 03:05:09 PM
Grainger, Metcalf, Weissberg, and Anderson, it 03:05:17 PM
bears production numbers NeoRx 31432 through 03:05:20 PM
31434. 03:05:24 PM
(WHEREUPON, Anderson Exhibit 11 was marked for 03:05:29 PM
identification.) 03:05:28 PM
Q. (By Mr. Timmons) Okay. Now, is that 03:05:45 PM
your signature on the middle of page NeoRx 03:05:48 PM
31434? 03:05:53 PM
A. Yes. 03:05:56 PM
Q. Okay. And that's dated November 7th, 03:05:56 PM
1994, correct? 03:06:00 PM
A. Yes. 03:06:03 PM
Q. Okay. And if you turn back to -- I'm 03:06:18 PM
sorry -- Anderson 10, that's also dated November 03:06:22 PM
7th, 1994, right? 03:06:26 PM
A. Yes. 03:06:29 PM
Q. Do you see any differences -- 03:06:37 PM
MR. NODINE: Just -- I'd like -- 03:06:39 PM
MR. TIMMONS: Sorry. 03:06:40 PM
MR. NODINE: -- clarification on 03:06:42 PM
the -- what was -- the last question with 03:06:42 PM
respect to Anderson 10 was what? 03:06:43 PM
MR. TIMMONS: Whether or not your 03:06:46 PM

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signature is dated November 7th, 1994 also. 03:06:47 PM
MR. NODINE: Whether the signature is 03:06:51 PM
dated? 03:06:51 PM
MR. TIMMONS: Yeah. 03:06:52 PM
MR. NODINE: All right. Thank you. 03:06:53 PM
Q. (By Mr. Timmons) And -- and my 03:06:54 PM
question is, Dr. Anderson, do you see any 03:06:54 PM
differences in the signatures between the two 03:06:57 PM
documents? 03:06:58 PM
A. No, sir. 03:07:00 PM
Q. Okay. Did you sign two assignments 03:07:00 PM
on -- on November 7th, 1994, to your memory? 03:07:16 PM
A. I don't remember, you know, that day 03:07:21 PM
particularly whether I did or not. 03:07:28 PM
Q. If you would take Anderson Exhibit 03:07:30 PM
10, which is the one with the cover letter on it 03:07:33 PM
from Sue Lintott, and the first paragraph under 03:07:36 PM
the assignment ends with the following two 03:07:41 PM
lines -- or three lines, "which application in 03:07:44 PM
part discloses and claims subject matter 03:07:48 PM
disclosed in U.S. serial number 07/767,254 filed 03:07:51 PM
September 27, 1991 and now abandoned." Do you 03:07:58 PM
see that? 03:08:02 PM
A. Yes. 03:08:03 PM
Q. If you would take -- look at the same 03:08:04 PM

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paragraph for Anderson Exhibit 11, that doesn't 03:08:06 PM
have that reference to the September 7th -- 03:08:11 PM
September 27th, 1991 application, correct? 03:08:14 PM
A. Correct. 03:08:20 PM
Q. Okay. Do you remember signing -- 03:08:21 PM
assigning two applications -- I'm sorry, strike 03:08:27 PM
that. 03:08:29 PM
Do you remember signing two 03:08:30 PM
assignments on November 7th, 1994, one with and 03:08:31 PM
one without this reference to the application 03:08:35 PM
filed on September 27th, 1991? 03:08:38 PM
A. No. 03:08:41 PM
Q. Did NeoRx ever discuss with you that 03:08:42 PM
there was a change in this assignment to remove 03:08:44 PM
that reference to that application? 03:08:51 PM
MR. MELORO: Objection, lack of 03:08:53 PM
foundation. 03:08:54 PM
THE WITNESS: To the best of my 03:08:56 PM
recollection, no, I had no discussions with 03:08:56 PM
NeoRx about that. 03:09:01 PM
Q. (By Mr. Timmons) Okay. If you could 03:09:02 PM
look at the -- on the two documents, the 03:09:24 PM
signatures on page 2 of the documents, the 03:09:28 PM
signatures with Kunz, Klein, Reno, and Grainger 03:09:32 PM
on both of them, do you see any differences in 03:09:36 PM

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those signatures? 03:09:40 PM
A. I'm not a handwriting expert, but to 03:09:42 PM
my untrained eye, they look fairly similar. 03:09:49 PM
Q. Okay. Did anyone from NeoRx ever 03:09:58 PM
call you or contact you and ask your permission 03:10:00 PM
to change the first page of this assignment 03:10:03 PM
after you had signed it? 03:10:07 PM
A. No. 03:10:10 PM
Q. Do you know whether or not that's 03:10:15 PM
what happened in the differences between 03:10:16 PM
Anderson Exhibit 10 and Anderson Exhibit 11? 03:10:20 PM
A. I have no knowledge of that. 03:10:25 PM
Q. Would you have agreed to such a 03:10:31 PM
change without your knowledge, if they had asked 03:10:32 PM
you? 03:10:36 PM
MR. NODINE: Objection, lack of 03:10:37 PM
foundation, calls for speculation. 03:10:38 PM
THE WITNESS: At -- at the time, I 03:10:44 PM
don't know -- I didn't really know what the 03:10:54 PM
implications or what it would have meant by the 03:10:57 PM
statement that they -- that they were abandoning 03:11:00 PM
this application. 03:11:03 PM
Q. (By Mr. Timmons) Okay. My question 03:11:05 PM
was more would you have been -- well, strike 03:11:07 PM
that. 03:11:10 PM

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Do you see, on the third page of 03:11:12 PM
Anderson Exhibit 11, it says up in the upper 03:11:14 PM
right hand corner, "recorded patent and 03:11:18 PM
trademark office, March 9th, 1995," do you see 03:11:20 PM
that? 03:11:24 PM
A. Yes. 03:11:25 PM
Q. Let's -- oh, we've already marked it. 03:12:01 PM
Kunz Exhibit 17 is a December 3rd letter from 03:12:03 PM
Anna Lewak Wight to yourself. It bears 03:12:08 PM
production numbers UAB 00083 through 99. 03:12:15 PM
And flip through and read whatever 03:12:32 PM
you'd like to read, but my question is, Doctor, 03:12:33 PM
have you ever seen this document before? 03:12:36 PM
A. Yes, this is a copy of the -- of a 03:13:14 PM
memo that was in my -- my file. 03:13:16 PM
Q. Okay. Do you know what the petitions 03:13:20 PM
are that Ms. Wight is talking about in the first 03:13:35 PM
paragraph? 03:13:40 PM
A. No, I don't. 03:13:54 PM
Q. Did you ever sign any petitions to 03:13:55 PM
change inventorship for any of the applications 03:13:59 PM
that you were -- that were filed for NeoRx? 03:14:02 PM
A. And at what time -- 03:14:13 PM
Q. I guess the -- the more specific 03:14:15 PM
question would be about December 1996. 03:14:17 PM

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A. Yes. 03:27:22 PM
Q. Okay. Would that be called a bolus administration of cytochalasin B? 03:27:22 PM 03:27:23 PM
A. I don't think there's -- there's any real standardized definition of the word bolus. 03:27:33 PM 03:27:35 PM
In -- in normal medical parlance, bolus would be an -- an intravenous or -- or a -- or an intra-arterial injection all at once. 03:27:41 PM 03:27:47 PM 03:27:51 PM
Q. Okay. 03:27:57 PM
A. This was not a -- this was not an intravenous or intravascular injection that went into the whole animal. 03:27:57 PM 03:27:59 PM 03:28:04 PM
Q. Okay. But in this case, there was a single administration of cytochalasin B, correct? 03:28:06 PM 03:28:08 PM 03:28:12 PM
A. Correct. 03:28:13 PM
Q. Okay. And that lasted for 1.5 to 3 minutes, right? 03:28:13 PM 03:28:16 PM
A. Yes. 03:28:17 PM
Q. Okay. And at the bottom couple of lines, it states that "proliferation of vascular smooth muscle cells at the site of traumatization was not inhibited by treatment with CB," which is cytochalasin B, right? 03:28:17 PM 03:28:28 PM 03:28:31 PM 03:28:32 PM 03:28:35 PM
A. Correct. 03:28:39 PM

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Q. Okay. If the cytochalasin B is applied to the site of trauma for a sustained amount of time, could the cytochalasin B inhibit the proliferation? 03:28:40 PM 03:28:43 PM 03:28:50 PM 03:28:56 PM
MR. NODINE: Objection to form, calls for speculation, lack of foundation. 03:28:58 PM 03:29:00 PM
THE WITNESS: How long are you thinking? 03:29:02 PM 03:29:03 PM
Q. (By Mr. Timmons) Three days or more. 03:29:04 PM
A. In this experiment, we only did the short application, and there was no attempt to -- to do a sustained release type of experiment. So -- so I would have to say we don't have -- we didn't do the experiments to be able to -- to answer -- I don't have the data to answer your question. 03:29:07 PM 03:29:10 PM 03:29:12 PM 03:29:16 PM 03:29:20 PM 03:29:22 PM 03:29:24 PM
Q. Okay. And is this abstract related to the biological stenting effect that we saw in the summary of the field of invention of the 712 application? 03:29:25 PM 03:29:29 PM 03:29:33 PM 03:29:38 PM
MR. NODINE: Objection to form, vague and ambiguous. 03:29:40 PM 03:29:41 PM
THE WITNESS: Yes, I believe so. 03:29:48 PM
Q. (By Mr. Timmons) Okay. And in this case, with that single administration of 03:29:49 PM 03:30:00 PM

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cytochalasin B, there was a sustained dilation following balloon traumatization, even without inhibition of vascular smooth muscle cell proliferation, correct? 03:30:03 PM 03:30:09 PM 03:30:13 PM 03:30:16 PM
A. Yes. 03:30:18 PM
Q. What role did you personally play in the work that's reported in this abstract of Anderson Exhibit 12? 03:30:20 PM 03:30:22 PM 03:30:26 PM
A. The -- the animal experiments were performed in Seattle, so I did not participate in the actual hands-on animal experiments. My role was more as, you know, collaborator, we discussed the idea over the telephone, and together we came up with -- with the idea to -- to try this experiment. 03:30:32 PM 03:30:35 PM 03:30:39 PM 03:30:43 PM 03:30:52 PM 03:30:54 PM 03:30:58 PM
Q. Okay. I think you could put that one aside for right now and go back to Kunz 17, the -- the letter with the -- with the claims on it, please. 03:31:04 PM 03:31:06 PM 03:31:10 PM 03:31:15 PM
A. Okay. 03:31:16 PM
Q. And when you received this letter on December -- on or about December 3rd, 1996, did you review the claims that are set forth for the 712 application that go from UAB 90 through 97 or so? 03:31:26 PM 03:31:33 PM 03:31:36 PM 03:31:39 PM 03:31:47 PM

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A. I don't recall, you know, specifically going and reading each claim. 03:31:53 PM 03:31:54 PM
Q. Did you feel that you were an inventor on at least some of the claims listed in this -- this document? 03:32:03 PM 03:32:05 PM 03:32:08 PM
MR. MELORO: Objection to form. 03:32:14 PM
THE WITNESS: Yes. The -- the previous version of these claims that I had been -- that I had reviewed was what prompted me to contact NeoRx and -- and initiate the -- the rereview of this. 03:32:17 PM 03:32:18 PM 03:32:21 PM 03:32:25 PM 03:32:29 PM
Q. (By Mr. Timmons) Okay. So as of December 3rd, 1996, you were going to be added as an inventor to the U.S. application serial number 08/389,712, correct? 03:32:31 PM 03:32:33 PM 03:32:36 PM 03:32:39 PM
MR. MELORO: Objection to form. 03:32:45 PM
MR. NODINE: Objection to form. 03:32:46 PM
THE WITNESS: To the best of my knowledge, yes, because that was what -- what was written on the -- on what was sent to me. 03:32:47 PM 03:32:48 PM 03:32:50 PM
Q. (By Mr. Timmons) Okay. Okay. Let -- I've got the U.S. patent number 6,515,009 issued February 4th, 19 -- or February 4th, 2003, which is previously marked as Klein Exhibit 7. If you could just pass the extra on to your counsel, 03:32:55 PM 03:32:55 PM 03:33:42 PM 03:33:47 PM 03:33:52 PM

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please. 03:33:55 PM
Okay. Have you seen this patent 03:34:03 PM
before? 03:34:05 PM
A. Yes, my counsel had a copy of this 03:34:10 PM
and -- and showed it to me. 03:34:15 PM
Q. Okay. Before your counsel had showed 03:34:17 PM
it to you, had you -- had you seen this patent 03:34:19 PM
before? 03:34:21 PM
A. No, not -- not in this form -- 03:34:23 PM
Q. Okay. 03:34:25 PM
A. -- that I know -- no, not in this 03:34:26 PM
form. 03:34:29 PM
Q. Do you know whether or not this is 03:34:30 PM
one of the patents you turned up on your 03:34:31 PM
computer search and we talked about earlier 03:34:33 PM
today? 03:34:36 PM
A. Yes. 03:34:37 PM
Q. Is it? 03:34:38 PM
A. It is. 03:34:39 PM
Q. Okay. Do you see the inventors of 03:34:39 PM
this patent application are listed as Lawrence 03:34:42 PM
L. Kunz and Richard A. Klein? 03:34:46 PM
A. Yes. 03:34:49 PM
Q. Who is Richard A. Klein? 03:34:50 PM
A. I don't know who Richard A. Klein is. 03:34:52 PM

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Q. Okay. Under -- a little bit under 03:34:56 PM
their names, the application number is 03:35:00 PM
08/389,712; do you see that? 03:35:05 PM
A. Yes. 03:35:11 PM
Q. Do you understand that this patent 03:35:12 PM
issued out of the application 08/389,712 03:35:13 PM
application? 03:35:17 PM
MR. NODINE: Objection, lack of 03:35:20 PM
foundation. 03:35:21 PM
THE WITNESS: I do now, if you're 03:35:22 PM
telling me that. 03:35:23 PM
Q. (By Mr. Timmons) Let's -- and that 03:35:25 PM
was the application in accordance with Kunz 17, 03:35:27 PM
the letter from December 3rd, 1996, in which you 03:35:32 PM
were to become named as an inventor? 03:35:36 PM
A. Okay. 03:35:38 PM
Q. That's what I'm asking you. If 03:35:38 PM
you -- if you would turn to UAB 00089, please. 03:35:39 PM
And the -- the application number from the chart 03:35:45 PM
you got from NeoRx is the same as the 03:35:50 PM
application number from which the 009 patent 03:35:53 PM
issued; is that correct? 03:35:56 PM
A. That's correct. 03:35:59 PM
Q. Okay. Do you know whether or not you 03:35:59 PM
were ever added as to -- as an inventor to UAB 03:36:01 PM

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patent number 6,515,009? 03:36:05 PM
A. No, I do not. 03:36:10 PM
Q. Okay. If you were not, do you know 03:36:13 PM
why not you were never added as an inventor to 03:36:14 PM
this -- this patent? 03:36:18 PM
A. No, I do not. 03:36:19 PM
Q. Did you ever discuss that issue with 03:36:22 PM
Ms. Wight as to why you weren't added as an -- 03:36:24 PM
as an inventor to the 009 patent? 03:36:29 PM
A. No, I did not. 03:36:31 PM
Q. Again, without giving substance, have 03:36:39 PM
you ever discussed why you were not added to the 03:36:43 PM
009 patent with your counsel? That's a yes or 03:36:45 PM
no question. 03:36:49 PM
A. Repeat the question. 03:36:53 PM
Q. It's a yes or no question. 03:36:54 PM
A. Okay. 03:36:56 PM
Q. So you don't give me substance of the 03:36:56 PM
discussions. 03:36:58 PM
A. Okay. 03:36:59 PM
Q. But my question is whether or not 03:36:59 PM
you've ever discussed with your counsel why you 03:37:00 PM
weren't added as an inventor to U.S. patent 03:37:03 PM
number 6,515,009? 03:37:05 PM
MR. NODINE: Let me just object to 03:37:10 PM

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the -- to the question, insofar as it calls for 03:37:11 PM
attorney-client privileged communications. I 03:37:12 PM
understand that you're entitled to ask for a yes 03:37:15 PM
or no answer. 03:37:17 PM
But when you define the question so 03:37:18 PM
precisely, to the exact nature of -- of the 03:37:20 PM
question, you end up, I think, invading the 03:37:24 PM
privilege. 03:37:27 PM
MR. TIMMONS: I see your point. Let 03:37:30 PM
me try to come up with something that will 03:37:31 PM
satisfy both our -- our needs. 03:37:32 PM
Q. (By Mr. Timmons) Did you ever 03:37:36 PM
discuss the issue of the inventorship of U.S. 03:37:36 PM
patent -- patent number 6,515,009 with your 03:37:41 PM
counsel, yes or no? 03:37:46 PM
A. Yes. 03:37:51 PM
Q. Okay. Did you ever discuss the issue 03:37:52 PM
of the inventorship of U.S. patent number 03:37:53 PM
6,515,009 with any representatives of Boston 03:37:56 PM
Scientific? 03:38:03 PM
A. No. 03:38:04 PM
Q. If you would turn, please, to column 03:38:08 PM
65 of the 009 patent, please. If you could read 03:38:12 PM
claim 1 to yourself, please. 03:38:23 PM
A. Okay. 03:38:38 PM

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Q. Did you have any contribution to what is claimed in claim 1 of the 009 patent? 03:38:39 PM 03:38:41 PM
A. Yes, I did. 03:38:47 PM
Q. What was your contribution? 03:38:48 PM
A. In -- in discussions with Dr. Kunz, we -- we discussed or -- or formulated this approach or the approach of using cytostatic drugs to inhibit vascular smooth muscle cell contraction and migration. 03:38:53 PM 03:38:56 PM 03:39:04 PM 03:39:11 PM 03:39:14 PM
Q. And did you ever discuss with Dr. Kunz whether or not you should be added as an inventor to the U.S. patent number 6,515,009? 03:39:16 PM 03:39:17 PM 03:39:20 PM 03:39:24 PM
A. All I ever saw were the -- the applications, and, like, for instance, this with the claims. And in looking at these -- the claims, the drafts that were sent to me, at -- at -- you know, on several occasions, I did mention to Dr. Kunz that -- that I thought, and actually to Dr. Schroff that -- that I should be included in these patents. 03:39:36 PM 03:39:37 PM 03:39:41 PM 03:39:47 PM 03:39:52 PM 03:39:55 PM 03:39:59 PM 03:40:04 PM
And, you know, to my recollection, Dr. Kunz's comment was that -- that the NeoRx legal office had a high turnover or they -- you know, they were, you know, behind in their work 03:40:09 PM 03:40:11 PM 03:40:16 PM 03:40:20 PM

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and that -- that all these things, you know, would eventually get done, that -- not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that -- not to worry, that the -- the NeoRx patent office was, you know, understaffed or -- or had a turnover rate of new people. 03:40:24 PM 03:40:27 PM 03:40:29 PM 03:40:32 PM 03:40:37 PM 03:40:39 PM 03:40:43 PM 03:40:46 PM
Q. Okay. 03:40:47 PM
A. So -- 03:40:48 PM
Q. I'm sorry. 03:40:49 PM
A. -- he insinuated that it was, you know, just a clerical -- clerical mistakes -- 03:40:50 PM 03:40:53 PM
Q. Okay. 03:40:56 PM
A. -- if things weren't getting done. 03:40:56 PM
Q. And Anna Lewak Wight wrote to you in December 1996 saying that you were going to be added as an inventor on the 712 application, right? 03:40:58 PM 03:41:04 PM 03:41:08 PM 03:41:10 PM
A. Yes -- 03:41:11 PM
Q. Okay. 03:41:11 PM
A. -- this (indicating). 03:41:12 PM
Q. If you could turn to the first page of the 009 application, do you see that? 03:41:13 PM 03:41:14 PM
A. Yes. 03:41:17 PM

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Q. That issued on February 4th, 2003, six and a half years later; is that correct? 03:41:17 PM 03:41:21 PM
A. Yes. 03:41:24 PM
Q. Okay. Did you ever ask why you weren't added in that six-and-a-half years to be an inventor to the 009 patent? 03:41:24 PM 03:41:27 PM 03:41:29 PM
A. No. 03:41:32 PM
Q. Do you know why you weren't added in the subsequent six and a half years to be an inventor of the 009 patent? 03:41:34 PM 03:41:36 PM 03:41:39 PM
A. No, I do not. 03:41:41 PM
(Whereupon, a discussion ensued off the record.) 03:43:13 PM
MR. TIMMONS: I would like to mark two documents, the first being -- looks like a fax transmission sheet from yourself to Janet Embretson, dated January 30th, 2003, BSM 9146 through 49, and the second one being Anderson Exhibit 14, which is U.S. patent number 5,811,447. 03:43:13 PM 03:43:13 PM 03:43:17 PM 03:43:21 PM 03:43:29 PM 03:43:35 PM 03:43:39 PM
(WHEREUPON, Anderson Exhibit 13 and Anderson Exhibit 14 were marked for identification.) 03:43:46 PM 03:43:45 PM
Q. (By Mr. Timmons) Okay. So there's one for you, and then one for your counsel underneath. Thank you. 03:43:46 PM 03:43:46 PM 03:43:48 PM
MR. TIMMONS: Do -- do you have the 03:43:53 PM

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47? It's not one of the ones we marked earlier. If not -- 03:43:53 PM 03:43:58 PM
MR. MELORO: I don't believe so. Yeah, I don't think so. 03:44:00 PM 03:44:00 PM
I'm sorry, so the fax is 13? 03:44:09 PM
MR. TIMMONS: The fax is 13 -- 03:44:10 PM
MR. MELORO: And the patent is 14? 03:44:11 PM
MR. TIMMONS: -- and the patent is 14. 03:44:14 PM 03:44:16 PM
Q. (By Mr. Timmons) Why don't you take a look at the -- the fax, please, first, and then I'm going to ask you some questions about it. 03:44:17 PM 03:44:17 PM 03:44:20 PM 03:44:22 PM
A. Okay. 03:44:41 PM
Q. Okay. Let's -- let's take a quick look at U.S. patent number 5,811,477. That issued in September 1988; do you see that? 03:44:46 PM 03:44:47 PM 03:44:54 PM
A. 1998. 03:44:57 PM
Q. 1998, yes, thank you. And you are a named inventor on the front of this patent, correct? 03:44:59 PM 03:45:02 PM 03:45:03 PM
A. Yes. 03:45:04 PM
Q. When -- when did you first see this patent as it issued, if -- if you have at all? 03:45:14 PM 03:45:15 PM
A. Probably the first time I saw it was 03:45:19 PM

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when I was showed -- or -- or when I did a search on the Internet for -- for patents. 03:45:21 PM 03:45:25 PM

Q. Okay. Let's take a look at the fax sheet you sent to Ms. Embretson. You state that you have read over the materials you sent me. Do you see that? 03:45:30 PM 03:45:41 PM 03:45:46 PM 03:45:49 PM

A. Yes. 03:45:50 PM

Q. What were the materials that Miss Embretson -- Ms. Embretson sent you? 03:45:50 PM 03:45:51 PM

A. I didn't save copies of them, but as I recall, it was a series of -- of documents, you know, lists of issued claims and then a form -- and then a form with a place for my -- for a signature. 03:45:56 PM 03:46:01 PM 03:46:09 PM 03:46:15 PM 03:46:23 PM

Q. Okay. What was the signature for? 03:46:25 PM

A. As I recall, and I have -- I don't have a copy of it, so I can't remember exactly, but as I recall, the -- this time period, the -- the gist of the form was to sign it if you agree that you should be removed from this patent, if you're your name should be removed from this patent. 03:46:31 PM 03:46:33 PM 03:46:37 PM 03:46:48 PM 03:46:54 PM 03:46:57 PM 03:47:00 PM

Q. Okay. And the first -- the second paragraph talks about European patent application number 94916743. And were you given 03:47:01 PM 03:47:03 PM 03:47:06 PM

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a form with regard to the claims of that patent application, as to whether or not you should be removed as an inventor? 03:47:12 PM 03:47:15 PM 03:47:16 PM

A. I believe so, yes. 03:47:19 PM

Q. And you state that you agree that you had no input into these claims and you agreed to be removed from that patent? 03:47:20 PM 03:47:21 PM 03:47:24 PM

A. Yes. 03:47:26 PM

Q. Okay. And then the second paragraph is -- regards the claims of a therapeutic inhibitor of vascular smooth musde cells. That's from the 441 patent. Do you see that? 03:47:26 PM 03:47:30 PM 03:47:38 PM 03:47:42 PM

A. Yes. 03:47:45 PM

Q. Were you given the patent by Ms. Embretson, or were you just given the claims to the patent? 03:47:46 PM 03:47:47 PM 03:47:51 PM

A. If I recall, I think -- I -- I don't recall for certain. 03:47:51 PM 03:47:53 PM

Q. Okay. Were you being asked whether or not you should be removed as an inventor from U.S. patent number 5,811,447? 03:47:55 PM 03:47:57 PM 03:47:59 PM

A. To the best of my recollection, yes. 03:48:06 PM

Q. Okay. Did -- did Ms. Embretson tell you why she thought you should be removed as an inventor from that patent? 03:48:08 PM 03:48:12 PM 03:48:14 PM

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A. As I recall, there was a cover letter to this packet, and it was -- and -- and I don't recall exactly the wording of it, so -- so I can't remember exactly what -- what it said. 03:48:20 PM 03:48:21 PM 03:48:29 PM 03:48:34 PM

But the -- the gist was, or as I recall, the -- the vein of the letter was, you know, to the effect that -- that we are reviewing these patents and these claims, and -- and, you know, do you -- you know, do you -- or I don't -- I can't recall whether it said do you -- should you be taken off or do you claim that you are a right full patent owner. 03:48:39 PM 03:48:43 PM 03:48:50 PM 03:48:54 PM 03:48:58 PM 03:49:05 PM 03:49:08 PM 03:49:11 PM

Q. And did you keep a copy of that letter? 03:49:15 PM 03:49:15 PM

A. No, I did not. 03:49:17 PM

MR. TIMMONS: Larry, again, if -- if a copy of that letter is in UAB's files, I would request a copy of it, please. Thank you. 03:49:19 PM 03:49:20 PM 03:49:23 PM

Q. (By Mr. Timmons) Okay. And in response, in this paragraph, you state that "some of the primary claims are the direct result of my input." What was the basis for -- for that statement? Or let me -- let me ask, is -- are the three attached pages the claims that you are reviewing with regard to the 447 03:49:29 PM 03:49:29 PM 03:49:32 PM 03:49:34 PM 03:49:38 PM 03:49:43 PM 03:49:47 PM

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patent? 03:49:50 PM

A. Yes. 03:49:54 PM

Q. Okay. So what -- what was the basis for your claim that some of the primary -- for your statement that "some of the primary claims are the direct result of my input"? 03:49:55 PM 03:49:56 PM 03:49:58 PM 03:49:59 PM

A. It was my opinion in reading these that I had contributed significantly to the development of these ideas, in collaboration with Dr. Kunz. 03:50:02 PM 03:50:07 PM 03:50:11 PM 03:50:14 PM

Q. Okay. I'm going to ask you some follow-up questions on that, but we have to change the tape. 03:50:16 PM 03:50:17 PM 03:50:19 PM

THE VIDEOGRAPHER: Here marks the end of videotape number 3 in the deposition of Peter Anderson. We are off the record, 3:50 p.m. 03:50:21 PM 03:50:22 PM 03:50:25 PM

(Whereupon, there was a brief recess.) 03:50:38 PM

THE VIDEOGRAPHER: Here begins videotape number 4 in the deposition of Peter Anderson. We are back on the record, 3:54 p.m. 03:54:54 PM 03:54:57 PM 03:54:58 PM

MR. TIMMONS: Could you just read his last answer, please? 03:55:02 PM 03:55:03 PM

(Whereupon, the record was read by the court reporter as follows: 03:55:32 PM 03:55:04 PM

"QUESTION: So what -- what was the 03:49:56 PM

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basis for your claim that some of the primary -- 03:49:56 PM
for your statement that 'some of the primary 03:49:58 PM
claims are the direct result of my input'? 03:49:59 PM
ANSWER: It was my opinion in reading 03:50:02 PM
these that I had contributed significantly to 03:50:07 PM
the development of these ideas, in collaboration 03:50:11 PM
with Dr. Kunz?") 03:50:14 PM
Q. (By Mr. Timmons) Okay. And is the 03:55:32 PM
same reason the reason that you stated this 03:55:42 PM
claim would not have been possible without my 03:55:45 PM
direct involvement and scientific expertise? 03:55:47 PM
A. Yes. 03:55:51 PM
Q. Okay. And you state that "I have 03:55:52 PM
noted the" area -- "areas of these claims where 03:55:57 PM
my direct input was instrumental in developing 03:55:59 PM
these claims." Is that the portions that you've 03:56:02 PM
underlined throughout the claims and put your 03:56:04 PM
initials by over the next three pages? 03:56:06 PM
A. The areas that I underlined are -- 03:56:09 PM
are some, but not all, of the -- the ones. I -- 03:56:12 PM
I just picked out some of the more glaring 03:56:19 PM
or what I thought were most representative 03:56:23 PM
issues that -- that I brought to the table that 03:56:29 PM
then became part of a collaborative or a -- a 03:56:37 PM
combined approach. 03:56:42 PM

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Q. It states next that "I am a 03:56:47 PM
cardiovascular pathologist, with many years of 03:56:48 PM
experience in this" area, I think area. 03:56:51 PM
A. Yeah, sorry. Spell check. 03:56:53 PM
Q. Spell check doesn't work when you got 03:56:56 PM
it right. 03:56:57 PM
A. I can spell, just don't use the right 03:56:58 PM
word. 03:57:00 PM
Q. What was the area that you were 03:57:01 PM
talking about in this letter? 03:57:01 PM
A. In the area of cardiovascular 03:57:04 PM
applications. 03:57:10 PM
Q. Okay. And then you write, the -- 03:57:12 PM
"the NeoRx investigators were NOT" -- N-O-T in 03:57:14 PM
all capital letters -- "familiar with this area 03:57:18 PM
and they depended upon me to provide this 03:57:21 PM
input." Who were the NeoRx investigators that 03:57:24 PM
you were talking about there? 03:57:26 PM
A. At that point, Dr. Kunz and 03:57:29 PM
Dr. Schroff were the -- the two NeoRx 03:57:31 PM
investigators that I had -- had been working 03:57:36 PM
with. 03:57:41 PM
Q. And they weren't familiar with the 03:57:42 PM
cardiovascular area? 03:57:43 PM
MR. NODINE: Objection to form. 03:57:51 PM

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THE WITNESS: When I began my 03:57:51 PM
collaborations with Dr. Kunz and -- and 03:57:52 PM
Dr. Schroff, they were not familiar with the 03:57:55 PM
area. And as we worked together to develop the 03:57:59 PM
ideas that are embodied in these claims, they 03:58:04 PM
became more familiar with the area. 03:58:11 PM
Q. (By Mr. Timmons) If you could turn 03:58:16 PM
back to the -- the cover of the 447 patent, do 03:58:16 PM
you see the other listed inventors there, they 03:58:21 PM
include John M. Reno. Do you know who Dr. or 03:58:24 PM
Mr. Reno is? 03:58:29 PM
A. No, I do not. 03:58:30 PM
Q. Do you know who David Grainger is? 03:58:32 PM
A. At one point, some investigators from 03:58:37 PM
Cambridge came to UAB with Larry and met with 03:58:45 PM
me, so I -- I met them, but I don't recall their 03:58:53 PM
names. I think David Grainger was one of them, 03:59:01 PM
but I can't remember -- there were two of them, 03:59:04 PM
but I can't remember the name of the other 03:59:06 PM
person, but I -- and I can't be certain that it 03:59:08 PM
was Grainger that -- that was visiting with 03:59:11 PM
me. 03:59:14 PM
Q. And there's two more names from 03:59:15 PM
Cambridge, James Metcalf and Peter Weissberg. 03:59:16 PM
Were they anybody that you met at UAB? 03:59:21 PM

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A. Again, I -- I may have, but I can't 03:59:24 PM
recall exactly, you know, who -- who it was 03:59:28 PM
that -- that came with Larry to -- to visit my 03:59:31 PM
lab in -- in Birmingham. 03:59:36 PM
Q. And when they advised your lab, did 03:59:38 PM
you do any experimental work in conjunction with 03:59:41 PM
those investigators from Cambridge? 03:59:45 PM
A. We didn't do any experimental work. 03:59:48 PM
If I remember correctly, they toured our animal 03:59:51 PM
lab, but we didn't do any collaborative work 03:59:55 PM
or -- or none of the experiments that I was 03:59:57 PM
working on with Larry did we, you know, attempt 04:00:01 PM
to do in -- in Birmingham. 04:00:07 PM
Q. Okay. If you would turn back again 04:00:09 PM
to the letter. I apologize for jumping back and 04:00:13 PM
forth. You can put the 447 patent aside for 04:00:17 PM
right now. 04:00:18 PM
What -- before we get to the -- the 04:00:23 PM
claims on the last three pages, your -- your fax 04:00:25 PM
transmission sheet is dated January 30th, 2003; 04:00:30 PM
do you see that? 04:00:34 PM
A. Yes. 04:00:35 PM
Q. Do you see the -- the 447 patent 04:00:36 PM
issued in September of 1998? It's -- 04:00:39 PM
A. Oh, yes. 04:00:43 PM

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Q. -- up here. Yeah. 04:00:44 PM
When did Ms. Embretson approach you 04:00:45 PM
with the materials regarding your inventorship 04:00:48 PM
or lack thereof in the 447 patent? 04:00:53 PM
A. I don't have a -- a -- or I didn't 04:01:00 PM
keep a copy of the cover letter, so I don't know 04:01:02 PM
for sure when it was. It was sometime, though, 04:01:05 PM
you know, just prior to -- to January. I 04:01:11 PM
don't -- I don't know if it was a week prior or 04:01:14 PM
a month prior. 04:01:18 PM
Q. In her cover letter to you, did 04:01:48 PM
Ms. Embretson mention anything about any 04:01:52 PM
impending purchases or licenses of any of the 04:01:56 PM
NeoRx patents? 04:02:00 PM
A. Not to my knowledge. 04:02:03 PM
Q. Did she mention any possible deals 04:02:05 PM
between Boston Scientific and NeoRx regarding 04:02:09 PM
the NeoRx patents? 04:02:14 PM
A. No. I -- I mean, I don't -- I don't 04:02:16 PM
recall that, any mention of that in the 04:02:17 PM
letter. 04:02:20 PM
Q. Did you know that in -- in 04:02:21 PM
approximately April, 2003, Boston Scientific 04:02:25 PM
purchased or licensed patents from NeoRx? 04:02:28 PM
A. No, I did not know that. 04:02:34 PM

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Q. Do you know that today, other than 04:02:35 PM
what -- 04:02:36 PM
A. Yes. 04:02:37 PM
Q. -- I've just told you? 04:02:38 PM
A. Yes. 04:02:39 PM
Q. Okay. I'll -- when -- when did you 04:02:41 PM
first learn that Boston Scientific had purchased 04:02:42 PM
or licensed patents from NeoRx? 04:02:44 PM
A. I don't recall, I don't recall when 04:02:54 PM
it was, but I -- I think it was due in a -- in 04:02:59 PM
a -- you know, I'm a lot of List Serves for -- 04:03:09 PM
for interventional cardiology, and it might have 04:03:15 PM
come up as a press release on one of those. 04:03:18 PM
But I -- you know, I didn't -- I 04:03:21 PM
didn't go out looking for it. I -- you know, I 04:03:23 PM
just sort of fortuitously ran across it in 04:03:25 PM
some -- some communication, some, you know, 04:03:29 PM
public communication. 04:03:32 PM
Q. Were you aware that the 009 patent, 04:03:34 PM
Klein Exhibit 7, was one of the patents that was 04:03:43 PM
purchased by Boston Scientific from NeoRx? 04:03:46 PM
A. No, I was not. The -- the only 04:03:52 PM
records I had of any of the patent applications 04:03:58 PM
were the -- whatever you -- you call it, the 04:04:01 PM
submission number or -- or the -- from the 04:04:04 PM

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drafts that went in to -- for submission. So 04:04:06 PM
I -- I never had any of the patent numbers, so I 04:04:10 PM
didn't -- had no way of tracing back. 04:04:13 PM
Q. Did -- have you ever learned that 04:04:19 PM
Ms. Embretson's attempts to have you removed as 04:04:23 PM
an inventor from the 447 had anything to do with 04:04:28 PM
any impending purchase of the patents by Boston 04:04:31 PM
Scientific? 04:04:36 PM
A. No, I have no -- no indication, no -- 04:04:39 PM
no knowledge of that. 04:04:45 PM
Q. Let's -- let's look at the claims 04:04:49 PM
that you marked up, please. In the first page, 04:04:51 PM
you underlined, in the first claim, the portion 04:04:57 PM
of the claim that -- that reads "to inhibit the 04:05:00 PM
contraction of vascular smooth muscle cells, 04:05:03 PM
while not eliminating their ability to secrete 04:05:07 PM
extracellular matrix." Do you see that? 04:05:12 PM
A. Yes. 04:05:14 PM
Q. Why did you underline that and put 04:05:14 PM
your -- your initials next to it? 04:05:16 PM
A. As I -- I stated before, I was -- you 04:05:18 PM
know, it was 6:30 at night, I was trying to get 04:05:21 PM
the papers off my desk, and I just was reading 04:05:23 PM
over these claims. And to support my statement 04:05:26 PM
that I thought I should be left on these claims, 04:05:30 PM

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I just underlined and marked things that I 04:05:34 PM
thought were -- were fairly representative of 04:05:37 PM
the types of input I had on our -- on our 04:05:43 PM
collaborative work and my collaborative work 04:05:48 PM
with Dr. Kunz. 04:05:50 PM
Q. And in addition to what you 04:05:52 PM
underlined, were there any other portions -- 04:05:53 PM
reviewing them now, not at 6:30 at night, are 04:05:55 PM
there any other portions of claim 1 which you 04:05:58 PM
would say was your -- your contribution to claim 04:06:00 PM
1? 04:06:05 PM
MR. MELORO: Objection to form. 04:06:06 PM
MR. NODINE: Object to form also. 04:06:09 PM
Are you asking him now to take care and to go 04:06:09 PM
through deliberately and to underline portions? 04:06:13 PM
MR. TIMMONS: Well, I'm -- I'm asking 04:06:16 PM
him, maybe not to underline, but to indicate 04:06:17 PM
what -- what portions of the claim he -- he 04:06:19 PM
feels he also contributed to in claim 1. 04:06:21 PM
MR. NODINE: Well, I just want to be 04:06:23 PM
clear that -- that, you know, that effort may 04:06:25 PM
take some time, and you're -- if you want him to 04:06:27 PM
do that, that's fine. But I -- I don't want him 04:06:30 PM
to rush through that, if that's truly your 04:06:32 PM
question. 04:06:35 PM

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MR. TIMMONS: No, no. And right now, 04:06:35 PM
the question is limited to claim 1, which only 04:06:36 PM
has three or four more lines. 04:06:39 PM
Q. (By Mr. Timmons) But take your time, 04:06:40 PM
Dr. Anderson, whatever you want to do. 04:06:42 PM
A. The -- the general approach of using 04:07:00 PM
a cytostatic agent, cytochalasin B or the 04:07:05 PM
cytochalasin family, to -- administered to blood 04:07:11 PM
vessels after an injury to inhibit contraction 04:07:19 PM
of vascular smooth muscle cells, while not 04:07:28 PM
eliminating their ability to secrete 04:07:31 PM
extracellular matrix, the -- you know, and then 04:07:35 PM
the result of that activity results in -- or 04:07:38 PM
the -- the effects of that activity results in a 04:07:45 PM
biological stenting or -- or a prevention of the 04:07:49 PM
contraction of the blood vessel, all -- so -- so 04:07:53 PM
basically the entire embodiment of this first 04:07:59 PM
claim, I was involved in, again, not -- not only 04:08:02 PM
me, but I was involved in the development of 04:08:11 PM
that approach and that -- those ideas, using 04:08:15 PM
those components in this setting to try and 04:08:19 PM
elicit the specific effect that -- that is 04:08:22 PM
described here, which is to hold the vessel open 04:08:27 PM
so it doesn't -- so you don't get a restenosis. 04:08:31 PM
Q. Okay. Your name -- your initials and 04:08:35 PM

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a checkmark is by claim 2. Why did you put your 04:08:38 PM
initials and a check mark next to claim 2? 04:08:41 PM
A. The issue of -- of using this 04:08:47 PM
approach, the cytostatic drug approach, as a -- 04:08:55 PM
you know, during my initial discussions with 04:09:02 PM
Dr. Kunz was -- were centered around the -- 04:09:04 PM
using this approach to help prevent the 04:09:11 PM
restenosis that occurs after angioplasty. 04:09:14 PM
So I had a significant impact or a 04:09:18 PM
significant component -- or -- that -- for why 04:09:20 PM
that was included in this -- in this -- you 04:09:24 PM
know, in that claim. 04:09:28 PM
Q. And claim 8, you also underline a 04:09:29 PM
portion of that claim and put your initials by 04:09:31 PM
it. Could you tell me why you did that? 04:09:33 PM
A. Again, the use of -- of cytostatic 04:09:39 PM
agents to inhibit cell proliferation was the -- 04:09:46 PM
the main component of our -- you know, the -- 04:09:52 PM
the ideas that -- that we had developed. And 04:09:55 PM
stenting being another form, like angioplasty, 04:10:00 PM
another form of vascular injury, it was 04:10:05 PM
appropriate to -- or I felt it was appropriate 04:10:10 PM
to point that out. 04:10:12 PM
Q. Okay. If you would flip the page, 04:10:13 PM
why did you underline that portion of claim 9? 04:10:16 PM

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I don't want to torture you, but there's a lot 04:10:22 PM
of repetition here. 04:10:33 PM
A. Yeah. 04:10:35 PM
Q. If you want to make it a little bit 04:10:35 PM
shorter than your previous one and maybe refer 04:10:36 PM
back, but, please -- 04:10:38 PM
A. Okay. 04:10:40 PM
Q. -- feel comfortable, however you want 04:10:40 PM
to say that. 04:10:41 PM
A. Again, the same -- this contains many 04:10:53 PM
of the same approaches that we had -- that we 04:10:57 PM
had discussed and -- and, you know, come 04:10:59 PM
together, you know, with the -- the ideas 04:11:03 PM
collaboratively. 04:11:05 PM
Q. Is there any significance to the 04:11:07 PM
asterisk that -- that's by this one, is that -- 04:11:09 PM
A. No. 04:11:13 PM
Q. -- is there anything -- 04:11:14 PM
A. In fact, some do, some don't, some 04:11:14 PM
have checks -- 04:11:16 PM
Q. Okay. 04:11:17 PM
A. -- I guess. 04:11:18 PM
Q. I thought you might have been 04:11:19 PM
prioritizing something. 04:11:20 PM
A. No, no. Probably 6:30 at night, I 04:11:21 PM

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was just doodling. 04:11:23 PM
Q. Should have gone to law school. We 04:11:27 PM
start at 10 o'clock in the morning and work 04:11:30 PM
later. 04:11:33 PM
Claim 10 -- 04:11:35 PM
MR. MELORO: Some people start at 04:11:35 PM
10:00 in the morning. 04:11:36 PM
Q. (By Mr. Timmons) Claim -- claim 10, 04:11:42 PM
why did you circle cytostatic agent and put your 04:11:42 PM
initials by that? 04:11:46 PM
A. Again -- and that -- I wasn't 04:11:48 PM
attempting to -- you know, with this, I wasn't 04:11:50 PM
attempting to say just these. So these are not 04:11:56 PM
exclusive. 04:11:59 PM
Q. Yeah. 04:12:01 PM
A. These are -- were designed to just 04:12:01 PM
point out some of the basic approaches and 04:12:02 PM
issues that I felt that I had had a significant 04:12:05 PM
contribution to bringing these ideas to 04:12:09 PM
fruition. 04:12:14 PM
Q. And finally, for claim -- claim 12, 04:12:15 PM
why did you underline and put your initials by 04:12:18 PM
that portion of the claim? 04:12:21 PM
A. That's basically a -- a rewrite of -- 04:12:28 PM
of claim 1, but saying cytoskeletal inhibitor as 04:12:32 PM

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opposed to a cytostatic agent, although they -- 04:12:39 PM
those terms can almost be used synonymously. 04:12:42 PM
Q. Okay. Why -- why would a 04:12:46 PM
cytoskeletal inhibitor and cytostatic agent -- 04:12:47 PM
why could those terms almost be used 04:12:47 PM
synonymously? 04:12:52 PM
A. I'm not a -- a clinical chemist or 04:12:54 PM
pharmacologist, but in -- in many instances, a 04:12:56 PM
cytostatic drug works by inhibiting cytoskeletal 04:12:59 PM
components; not always, but in many times, 04:13:06 PM
that's -- that's the mechanism of action. 04:13:10 PM
MR. TIMMONS: Why don't we take a -- 04:13:15 PM
a break now. 04:13:16 PM
THE VIDEOGRAPHER: We are going off 04:13:19 PM
the record, 4:13 p.m. 04:13:20 PM
(Whereupon, a discussion ensued off the record.) 04:13:23 PM
THE VIDEOGRAPHER: Going back on the 04:39:58 PM
record, 4:39 p.m. 04:39:59 PM
Q. (By Mr. Timmons) Dr. Anderson, I 04:40:06 PM
want to go back to the 447 patent and Anderson 04:40:07 PM
13, which is your fax in response to 04:40:10 PM
Ms. Embretson. The -- the materials that 04:40:12 PM
Ms. Embretson sent you and that you were 04:40:18 PM
responding to with this fax, did they come to 04:40:21 PM
your home, or did they come to the office; do 04:40:25 PM

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you remember? 04:40:29 PM
A. I don't remember. 04:40:29 PM
Q. Okay. Did you -- again, without the 04:40:32 PM
substance between you and your attorney, did you 04:40:36 PM
bring the attention -- to the attention of your 04:40:42 PM
attorneys Ms. -- Ms. Embretson's communication 04:40:46 PM
to you in January of 2003? 04:40:49 PM
MR. NODINE: Object, insofar -- 04:40:54 PM
insofar as it calls for disclosing 04:40:55 PM
attorney-client communications. 04:40:59 PM
Otherwise, if you can answer the 04:41:02 PM
question without doing so, you may answer. 04:41:02 PM
Further, object to the form, vague 04:41:07 PM
and ambiguous. 04:41:08 PM
MR. MELORO: You're asking whether he 04:41:12 PM
talked to his attorneys at about the time? 04:41:12 PM
MR. TIMMONS: No, no. I thought I 04:41:15 PM
had a perfectly fine question. 04:41:16 PM
Q. (By Mr. Timmons) Which was, the 04:41:17 PM
materials you received from Ms. Embretson in 04:41:18 PM
January 2003, did you bring those to the 04:41:20 PM
attention of your attorneys at UAB Research 04:41:22 PM
Foundation? 04:41:27 PM
MR. NODINE: Objection to the form of 04:41:28 PM
the question. 04:41:29 PM

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THE WITNESS: No. 04:41:31 PM
Q. (By Mr. Timmons) Okay. When you -- 04:41:32 PM
before you sent out this fax to Ms. Embretson, 04:41:34 PM
did you run this fax past your attorneys? 04:41:37 PM
A. No. 04:41:45 PM
Q. Okay. Why not? 04:41:45 PM
A. I don't know why I didn't. 04:41:53 PM
Q. Okay. Were you still under the 04:41:56 PM
instructions that you were to sign what NeoRx 04:41:59 PM
sends you and -- and just send it on back to 04:42:04 PM
them? 04:42:07 PM
MR. MELORO: Objection to form. 04:42:08 PM
MR. NODINE: Objection to form, 04:42:09 PM
objection to the recharacterization of the 04:42:10 PM
testimony. 04:42:13 PM
THE WITNESS: In 2003, I don't 04:42:17 PM
recall, you know, I -- I can't recall what my 04:42:25 PM
thought process was as to which -- which way I 04:42:28 PM
went. I just filled it out and sent it back. 04:42:35 PM
Q. (By Mr. Timmons) Okay. And in this 04:42:42 PM
case, you disagreed with Ms. Embretson as to 04:42:44 PM
whether or not you should be taken off the 447 04:42:49 PM
patent, correct? 04:42:51 PM
A. Correct. 04:42:53 PM
Q. Okay. 04:42:53 PM

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MR. TIMMONS: Tom, this is a shot in 04:43:14 PM
the dark, but if -- if, for any reason, Boston 04:43:15 PM
Scientific has the materials that -- well, as a 04:43:18 PM
matter of fact, there's a BSN production number 04:43:21 PM
across the bottom of this, which I assume is one 04:43:24 PM
of Boston Scientific's productions. 04:43:26 PM
If Boston Scientific has, in their 04:43:32 PM
possession, a copy of the communication from 04:43:32 PM
Ms. Embretson to Dr. Anderson, I -- I'd request 04:43:36 PM
a copy of that, please. 04:43:41 PM
MR. MELORO: To -- to my knowledge, 04:43:43 PM
we don't, but I'll take it under advisement. 04:43:44 PM
MR. TIMMONS: Thank you very much. 04:43:48 PM
Q. (By Mr. Timmons) Okay. 04:43:49 PM
Dr. Anderson, could you turn back to Anderson 04:43:49 PM
Exhibit 8, which was the agreement between NeoRx 04:43:57 PM
and the UAB Research Foundation. It's got a 04:44:02 PM
cover letter on it, July 16, 1991. 04:44:17 PM
A. Okay. 04:44:22 PM
Q. Okay. 04:44:22 PM
A. Got it. 04:44:23 PM
Q. If you would turn to page 7 of that 04:44:26 PM
agreement, please. 04:44:29 PM
A. Okay. 04:44:39 PM
Q. 7 -- paragraph 7.2 talks about any 04:44:42 PM

both? 04:55:14 PM
A. Starting with claim 18, this, again, 04:55:16 PM
is -- is -- and -- and I'm not familiar -- you 04:55:28 PM
know, familiar with the wording of claims and 04:55:32 PM
what the wording means, but -- but the 04:55:35 PM
scientific approach here of using a cytostatic 04:55:37 PM
therapeutic agent in a stent for a -- to inhibit 04:55:43 PM
restenosis was the -- the crux of the 04:55:49 PM
discussions between Dr. Kunz and myself or was a 04:55:56 PM
component of discussions between Dr. Kunz and 04:56:00 PM
myself. 04:56:04 PM
Q. And how about claim 55? 04:56:05 PM
A. 55, I would say the same thing, that 04:56:10 PM
the -- the scientific approach of a sustained 04:56:13 PM
release form of a cytostatic agent to prevent 04:56:17 PM
smooth muscle cell proliferation and migration 04:56:22 PM
and contraction were altogether similar to -- to 04:56:25 PM
the scientific information that we worked out 04:56:30 PM
together in our collaborations. 04:56:35 PM
Q. And just to go back to something that 04:56:38 PM
we -- we talked about before, in your work with 04:56:40 PM
NeoRx, you did not use an intravascular stent as 04:56:43 PM
the method for delivery of a cytostatic agent to 04:56:48 PM
the location of vascular trauma, correct? 04:56:52 PM
MR. NODINE: Objection, leading, and 04:56:55 PM

recharacterization of the prior testimony. 04:56:56 PM
THE WITNESS: In my working with 04:56:59 PM
NeoRx, we never did any studies with stents. 04:57:03 PM
Q. (By Mr. Timmons) Okay. Do you 04:57:14 PM
consider yourself an inventor of the claims of 04:57:22 PM
U.S. application number 6 -- U.S. patent number 04:57:28 PM
6,171,609? 04:57:32 PM
MR. MELORO: Objection. 04:57:37 PM
MR. NODINE: Objection, insofar as it 04:57:37 PM
calls for a legal conclusion. 04:57:39 PM
But answer, if you -- if you know. 04:57:41 PM
THE WITNESS: That's this? 04:57:43 PM
Q. (By Mr. Timmons) That's the patent 04:57:44 PM
we just went over, claims 18 and 55. 04:57:44 PM
A. Many of this -- most of the 04:57:48 PM
scientific input and the -- or the scientific 04:57:50 PM
components and the ideas expressed in these 04:57:55 PM
claims, to the best of my ability, are related 04:57:58 PM
to the ideas that Dr. Kunz and I developed 04:58:02 PM
together. 04:58:06 PM
Q. And as the 609 patent stands today, 04:58:07 PM
the only inventor is Dr. Kunz, who was an 04:58:10 PM
employee of NeoRx, correct? 04:58:12 PM
A. Correct. 04:58:17 PM
Q. The next exhibit will be Klein 04:58:36 PM

Exhibit 4, which is U.S. patent number 04:58:37 PM
6,599,928, which issued on July 29, 2003. If 04:58:41 PM
you would pass the extra on to your counsel, 04:58:48 PM
please. 04:58:51 PM
Okay. Have you seen this patent 04:58:55 PM
before? 04:58:56 PM
A. Only, again, if -- this would have 04:58:57 PM
likely come up on my list during my Internet 04:59:08 PM
search, but I don't recall specifically pulling 04:59:14 PM
this individual one up and reading it. 04:59:18 PM
Q. Okay. And you are not a named 04:59:21 PM
inventor of this 928 patent, at least on its 04:59:24 PM
face, correct? 04:59:28 PM
A. Correct. 04:59:29 PM
Q. Okay. And if you see -- again, under 04:59:30 PM
related U.S. application data, the application 04:59:32 PM
which led to the 928 patent is a continuation of 04:59:34 PM
application number 08/389,712. Do you see 04:59:37 PM
that? 04:59:43 PM
A. Yes. 04:59:44 PM
Q. And that 712 application was the one 04:59:44 PM
that you were told in December 1996 that you 04:59:45 PM
were going to be added to as an inventor, 04:59:48 PM
correct? 04:59:50 PM
A. Yes. 04:59:50 PM

Q. Okay. If you would turn again to 04:59:50 PM
column 65 of this patent. And maybe we can cut 04:59:54 PM
right to -- if you could look at claims 1, 2, 05:00:03 PM
and 8, and let me know whether or not you had 05:00:06 PM
any input as to the invention of those claims. 05:00:09 PM
A. 1, 2, and -- 05:00:38 PM
Q. 8. 05:00:45 PM
A. 8. 05:00:46 PM
In reading through 1, 2, and 8, the 05:01:04 PM
approaches, the -- the -- the scientific 05:01:08 PM
methodologies proposed here are consistent with 05:01:14 PM
the same scientific methodologies that Dr. Kunz 05:01:20 PM
and I discussed and -- and, you know, agreed 05:01:24 PM
upon for an effective way to -- to treat 05:01:30 PM
restenosis. 05:01:35 PM
Q. Do you consider yourself a -- an 05:01:36 PM
inventor of the claims of the 928 patent? 05:01:38 PM
MR. NODINE: Object, insofar as it 05:01:43 PM
calls for a legal conclusion. 05:01:44 PM
But you may answer, if you know. 05:01:46 PM
THE WITNESS: I had scientific input 05:01:52 PM
into developing these ideas. 05:01:54 PM
Q. (By Mr. Timmons) Okay. As the 05:01:59 PM
patent stands right now, the only inventors 05:02:00 PM
named are Drs. Kunz and Klein; do you see 05:02:04 PM

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that? 05:02:08 PM
A. Yes. 05:02:08 PM
Q. And if they are both NeoRx employees, 05:02:08 PM
the titles to the invention remains in NeoRx, 05:02:11 PM
correct? 05:02:15 PM
MR. NODINE: Object, insofar as it 05:02:16 PM
calls for a legal conclusion or interpretation 05:02:17 PM
of the contract. 05:02:19 PM
But you may answer. 05:02:21 PM
THE WITNESS: I would assume so, yes. 05:02:23 PM
MR. TIMMONS: Okay. Let's mark as 05:02:28 PM
Anderson Exhibit 15 a letter from Mr. Nodine. 05:02:41 PM
MR. NODINE: Yes, it's Nodine 05:02:51 PM
(pronunciation). 05:02:52 PM
MR. TIMMONS: Nodine, sorry. Once 05:02:53 PM
you get Larry, you forget about your last 05:02:54 PM
name -- to Mr. Meloro dated October 8th, 2004, 05:02:57 PM
and an attached letter from Mr. Meloro to 05:03:01 PM
Dr. Anderson dated April 30th, 2004, UA -- I'm 05:03:04 PM
sorry, UAB 1089 to 1091. 05:03:14 PM
(WHEREUPON, Anderson Exhibit 15 was marked for 05:03:26 PM
identification.) 05:03:26 PM
Q. (By Mr. Timmons) Let's -- let's 05:03:26 PM
start with the second letter first. Take a look 05:03:29 PM
at the letter from Mr. Meloro to yourself dated 05:03:33 PM

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April 30th, 2004. Do you recognize that 05:03:37 PM
letter? 05:03:43 PM
A. Yes. 05:03:43 PM
Q. What is it? 05:03:43 PM
A. It's a -- a memo written by 05:03:52 PM
Dr. Meloro to me. 05:03:55 PM
Q. Does it relate to a consulting 05:04:09 PM
agreement that you would have with Boston 05:04:10 PM
Scientific? 05:04:12 PM
A. Yes. 05:04:14 PM
Q. Okay. How -- who approached you 05:04:15 PM
regarding entering into a consulting agreement 05:04:21 PM
with Boston Scientific? 05:04:25 PM
A. Mr. Meloro called me. 05:04:28 PM
Q. How long before April 30th, 2004 did 05:04:34 PM
he call you? 05:04:36 PM
A. I can't recall exactly, but it was 05:04:41 PM
sometime within the -- a couple months, you 05:04:45 PM
know, within -- within a couple of month 05:04:48 PM
period. 05:04:50 PM
Q. Okay. And the third paragraph down 05:04:51 PM
says you will be paid $300 per hour for your 05:04:55 PM
consulting services. Do you see that? 05:04:58 PM
A. Yes. 05:05:01 PM
Q. Do you have a normal consulting 05:05:01 PM

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rate? 05:05:02 PM
A. No. 05:05:04 PM
Q. Is this the only consulting agreement 05:05:05 PM
that you've entered into in the recent past? 05:05:07 PM
A. No. 05:05:12 PM
Q. What other consulting agreements have 05:05:13 PM
you entered into in the last, let's say, three 05:05:14 PM
years? 05:05:16 PM
A. I have a consulting agreement with 05:05:19 PM
Merck. 05:05:22 PM
Q. Anyone else? 05:05:28 PM
A. And -- not within the last three 05:05:29 PM
years. 05:05:34 PM
Q. Okay. Is there an hourly rate by 05:05:35 PM
which you're paid by Merck under that consulting 05:05:36 PM
agreement? 05:05:42 PM
A. No. 05:05:43 PM
Q. Have you ever had an hourly rate 05:05:43 PM
which you're paid under the consulting 05:05:45 PM
agreement -- under a consulting agreement? 05:05:46 PM
A. No. 05:05:48 PM
Q. Okay. How did you come up with $300 05:05:50 PM
per hour for the consulting services? 05:05:52 PM
A. As I -- when I just -- when we 05:06:00 PM
talked on the -- when Mr. Meloro and I spoke on 05:06:06 PM

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the phone, I mentioned to him that most of my 05:06:08 PM
consulting was on a -- on a case basis, as a 05:06:10 PM
pathologist, where I would review glass slides 05:06:15 PM
of -- of animal tissues. 05:06:21 PM
And I told him that I usually charged 05:06:24 PM
$1,000 a day just to do -- to -- basically to 05:06:27 PM
start the consulting, to -- to look at the 05:06:35 PM
slides and come to an opinion. And if it was -- 05:06:38 PM
took longer than a day's worth of work, then I 05:06:42 PM
would -- would charge additionally. 05:06:46 PM
And I -- I can't remember our exact 05:06:50 PM
conversation, but it at -- at some point, it 05:06:52 PM
went from my normal paradigm of -- of looking at 05:06:57 PM
glass slides to agreeing to a $300 per hour fee. 05:07:02 PM
Q. Okay. Is it your signature on the 05:07:08 PM
second page of that consulting agreement? 05:07:11 PM
A. Yes. 05:07:13 PM
Q. Okay. And it's not dated, but did 05:07:14 PM
you agree -- did you sign that close to or -- or 05:07:17 PM
about April 30th, 2004? 05:07:21 PM
A. I believe so, yes. 05:07:24 PM
Q. Before you signed this, did you -- 05:07:27 PM
without -- I don't -- again, I don't want to get 05:07:32 PM
the substance, did you consult with your 05:07:34 PM
attorneys at UAB Research Foundation about 05:07:35 PM

NeoRx Corporation 410 West Harrison Seattle, Washington 98119 206-281-7001

NEORX

July 16, 1991

Mr. Peter J. Newman
Program Manager
UAB Research Foundation
The University of Alabama
at Birmingham
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010

Re: Executed Option Agreement - Monoclonal Antibody Conjugates for Coronary Artery Angioplasty Restenosis

Dear Peter:

Enclosed please find one fully executed and initialed duplicate original of the above-identified Agreement. Thanks for your cooperation in negotiating a mutually beneficial contract.

Very truly yours,

DEBRA

Debra K. Leith, J.D., Ph.D.
Patent Counsel

Enclosure: Agreement

AGREEMENT

THIS AGREEMENT is entered into as of June 1, 1991, by and between NEORX CORPORATION ("NeoRx"), a Washington corporation whose principal place of business is located at 410 West Harrison Street, Seattle, Washington 98119, and THE UAB RESEARCH FOUNDATION ("UABRF"), located at 1825 University Boulevard, Birmingham, Alabama 35294-2010.

WHEREAS, NeoRx is engaged in research and development of monoclonal antibody-based pharmaceutical products; and

WHEREAS, NeoRx desires to develop certain antibody-based products related to vascular trauma in general, and coronary artery angioplasty restenosis in particular; and

WHEREAS, UABRF is willing to grant NeoRx exclusive rights in any technology developed according to the terms and conditions of this agreement ("the Agreement");

NOW, THEREFORE, in consideration of the mutual representations, warranties and promises herein contained, the parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 "Technology" shall mean any present and future patent applications ("Patents") and confidential information, including know-how, trade secrets or other data ("Know-How"), related to vascular trauma in general, and coronary artery angioplasty restenosis in particular, that is owned or controlled (in the sense of being able to grant licenses) by UABRF and that relates specifically to work conducted by Dr. Peter Anderson involving the use of conjugates.

1.2 "Conjugate" shall mean a molecule capable of targeting human coronary artery smooth muscle cells and a cytotoxic agent that are joined, directly or indirectly, by at least one covalent bond.

1.3 "Post-Angioplasty Restenosis" shall mean proliferation of vascular smooth muscle cells in response to trauma associated with angioplasty of coronary arteries in human patients.

1.4 "Product(s)" shall mean each NeoRx product containing at least one Conjugate.

1.5 "Field of Use" shall mean any use.

1.6 "NeoRx" shall mean NeoRx Corporation, any person, corporation, firm, partnership, or other entity in which NeoRx owns or controls, either directly or indirectly, at least 50% of the voting stock thereof, and any legal representative, successor or assignee of NeoRx.

1.7 "Net Sales" shall mean the invoice amount received from commercial sales to independent, unrelated parties in bona fide arms-length transactions of the Product(s), less the following deductions:

(i) Trade and/or quantity discounts actually allowed and taken in such amounts as are customary in the trade;

(ii) Sales and other excise taxes and duties paid, absorbed, or allowed;

(iii) Amounts billed to cover transportation costs;

(iv) Actual cost of transportation charges, if transportation charges are not separately billed; and

(v) Amounts repaid or credited by reason of rejection, defects, or return, or because of retroactive price reductions.

1.8 "Phase III Clinical Trials" shall mean multicenter human trials conducted under provisions of 21 CFR Part 312, Subpart A, Section 312.1(a)(2) relating to Form FD 1571, Item 1C, with respect to the use of Product(s) in vivo in humans.

1.9 "Product License Application" shall mean an initial product license application covering a Product filed with the Food and Drug Administration, and any amendments thereto.

ARTICLE II
LICENSE OPTION

2.1 UABRF hereby grants to NeoRx, subject to the terms and conditions herein, an irrevocable option ("the Option") for an exclusive world-wide license in the Field of Use to develop Technology and to make, have made, use, sell, and have sold Product(s) for the term of this Agreement. Said license shall grant to NeoRx the right to grant sublicenses no greater in scope

than the license granted herein. Any sublicensees shall be subject to the provisions of this Agreement.

2.2 The Option shall remain exercisable by NeoRx until March 31, 1992. NeoRx shall exercise the Option by paying UABRF the license fee described in Section 4.1, below.

2.3 During the term of the Option, NeoRx shall pay for filing and prosecution of U.S. patent application(s) covering Joint Invention(s) (as defined in Section 7.2(c), below). In addition, NeoRx will make payments to UABRF for a collaborative study involving a pig model system, so long as the results of preliminary experiments warrant initiation and continuation of such collaborative study.

2.4 If NeoRx elects not to exercise the Option, NeoRx and UABRF shall negotiate in good faith any expenses and responsibilities related to further protection and transfer of Joint Inventions and any portion of Technology that is jointly developed by the parties.

ARTICLE III
DEVELOPMENT BY NEORX

3.1 NeoRx, at its own cost and expense, shall expend reasonable efforts and resources to carry out the development and marketing of Product(s) to the point of a Product License Application with the Food and Drug Administration within five years of the effective date of this Agreement, unless this deadline is extended by mutual agreement of the parties. UABRF shall not unreasonably withhold approval of any request by NeoRx to extend this period, if such request is supported by a reasonable showing by NeoRx of due diligence toward bringing the Product(s) to commercialization. "Due diligence" shall include any reasonable and diligent application for approval required by any government agency within the United States.

3.2 NeoRx agrees to use UABRF for the conduct of requisite clinical trials of the Product(s), wherever reasonably practicable.

3.3 After bringing Product(s) to the point of commercialization, NeoRx agrees to use reasonable efforts to keep Product(s) reasonably available to the public during the term of this Agreement.

ARTICLE IV
ROYALTIES AND PAYMENTS

4.1 The Option (described in Article II, above) granted to NeoRx is exercisable by notification and immediate payment to UABRF of a $20,000 license fee. Thereafter, NeoRx shall make the following non-refundable advance payments with respect to each Product:

(i) $50,000 upon initiation of Phase III Clinical Trials with the first Product; and

(ii) $50,000 upon approval by the Food and Drug Administration of each Product License Application, but no more than one such payment will be made for each Product License Application as defined herein.

4.2 If a Patent covering the Technology or a portion thereof, a Conjugate and/or related methods issues, NeoRx shall pay a royalty rate of one percent (1%) on Net Sales of Products by NeoRx and its sublicensees for the life of the last-to-expire patent. If multiple issued Patents cover the Product(s), the total royalty rate on Net Sales of Products under this Agreement shall not exceed 1%. If a Patent does not issue, NeoRx shall pay UABRF a royalty rate of one percent (1%) on Net Sales of Product by NeoRx and its sublicensees for a period of 10 years from the date of FDA approval. If cumulative annual royalties paid or owing at the end of the current calendar year do not exceed $10,000, NeoRx shall pay UABRF the difference between $10,000 and cumulative annual royalties paid or accrued for that calendar year. Such payment shall be made within ninety (90) days after December 31.

4.3 NeoRx agrees to submit to UABRF within ninety (90) days after each calendar half year ending June 30 and December 31, reports setting forth for the preceding six month period the amount of Product(s) sold by NeoRx and its sublicensees.

4.4 NeoRx and/or its sublicensees shall pay all necessary expenses for domestic and foreign commercialization of Product(s), and such expenses shall not be deducted from any payments due UABRF as provided herein.

4.5 All royalties shall be paid to UABRF in lawful money of the United States. NeoRx shall be responsible for compliance with all currency exchange laws and regulations.

ARTICLE V
REPORTS AND RECORDS

5.1 NeoRx shall keep and shall cause its sublicensees to keep accurate and complete records of Product(s) made, used, sold, or otherwise disposed of under this Agreement appropriate to determine the amount of royalty fee due hereunder. Such records shall be retained for at least three years following a particular reporting period. Together with each six month royalty payment, NeoRx shall provide UABRF with a written report with respect to the six months for which royalties are paid. Such reports shall state the Net Sales of all of the Products which are both manufactured by and sold or otherwise distributed by NeoRx (and its sublicensees), and shall specify in reasonable detail the manner by which the royalty payment for the six months period was calculated.

5.2 NeoRx (and its sublicensees) shall keep and maintain true and complete books and records pertaining to its distribution and sale of the Product(s) in sufficient detail to enable an independent certified public accountant, selected by UABRF, to determine with accuracy whether NeoRx has fully paid all sums payable to UABRF pursuant to this Agreement. NeoRx (and its sublicensees) shall maintain its books and records for at least three years following the date of a particular payment. NeoRx (and its sublicensees) shall make such books and records, as well as appropriate personnel, available at reasonable times during regular business hours for inspection and inquiry (subject to customary confidentiality agreements) by UABRF's designated certified public accountant. In addition, NeoRx (and its sublicensees) shall supply UABRF's certified public accountant with all details and supporting data reasonably necessary to verify the accuracy and completeness of all reports and payments required by this Agreement.

ARTICLE VI
PROPRIETARY AND CONFIDENTIAL INFORMATION

6.1 "Proprietary and Confidential Information" as herein used, means any and all information and materials concerning any aspect of each respective party not generally known to persons but those associated with that party. This shall include, but not be limited to, clinical data, concepts, processes and techniques, trade secrets, business strategies (whether or not implemented) and financial information.

6.2 Proprietary and Confidential Information is disclosed in the strictest confidence and shall be considered confidential and proprietary information of the disclosing party. Any Proprietary and Confidential Information that is disclosed in writing or orally between the parties shall be maintained as confidential for a period of five years from the date of this Agreement.

6.3 Except as authorized by the disclosing party, the receiving party will not duplicate, transfer or disclose nor allow any other person to duplicate, transfer or disclose any of the Proprietary and Confidential Information. The receiving party will safeguard all Proprietary and Confidential Information at all times so that it is not exposed to or used by unauthorized persons and will exercise at least the same degree of care used to protect its own confidential information. The receiving party shall not use Proprietary and Confidential Information without the prior written consent of the disclosing party.

6.4 The restrictive obligations set forth above shall not apply to the disclosure or use of any information which: 1) is or later- becomes publicly known under circumstances involving no breach of this Agreement by the receiving party; 2) is already known to the receiving party at the time of receipt of the information; 3) is lawfully made available by a third party; or 4) is independently developed by an employee of the receiving party who has not been privy to the Confidential Information provided.

6.5 Except as explicitly set forth herein, both parties understand that no patent rights or licenses are granted by this Agreement. The disclosure of Proprietary and Confidential Information hereunder shall not result in any obligation for either party to grant any party any rights in and to the patent rights or other confidential information of the other party, and that no other obligations of any kind are assumed by or implied against either party, except for those stated herein.

6.6 UABRF agrees to submit to NeoRx for review, at least thirty (30) days prior to oral publication or submission for written publication to any third party not bound by proprietary information restrictions comparable to those contained herein, the intended oral or written publication containing confidential information of NeoRx or information that is jointly developed by the parties. UABRF agrees that upon reasonable request of NeoRx, and to the extent reasonably necessary to protect NeoRx's patent or other legal rights, UABRF will delay from publishing such results of its investigation(s).

ARTICLE VII
PATENTS AND LITIGATION

7.1 "Inventions" shall mean all discoveries, concepts and ideas, whether patentable or not, which arise from or are directly related to Proprietary and Confidential Information or property, including but not limited to articles, processes, methods, formulas, systems and techniques, as well as improvements thereof and know-how related thereto.

7.2 Any Invention made in the performance of this Agreement and that relates to Technology or Product(s) shall be subject to the following terms and conditions:

(a) Where the Invention is made solely by UABRF or by employees and/or contractors of UABRF, title to such Invention shall remain in UABRF, and NeoRx and UABRF agree to negotiate in good faith a license agreement whereby NeoRx would be granted an exclusive, world-wide, irrevocable license to make, have made, use, sell, have sold and sublicense such Invention for the longer of 1) the term of any patent that may issue thereon, or 2) a period of ten (10) years from the date of the Agreement. Such license agreement shall not conflict with and shall be subject to laws and regulations of, and agreements with, the United States Government and public and private funding organizations, including NIH guidelines. ~~If negotiations between NeoRx and UABRF do not result in a license agreement, UABRF will not license the Invention to another party on more favorable terms than offered to NeoRx;~~

(b) Where the Invention is made solely by employees or contractors of NeoRx, title to such Invention shall remain in NeoRx;

(c) Where the Invention is made jointly by employees or contractors of NeoRx and of UABRF ("Joint Invention"), title shall rest in both NeoRx and UABRF.

In the case of Inventions described in Section 7(a) only, UABRF has the option to prepare and file world-wide patent applications for Inventions at its sole discretion. In the case of Inventions described in Section 7(b) only, NeoRx has the option to prepare and file world-wide patent applications for Inventions at its sole discretion. In the case of Joint Inventions described in Section 7(c) only, NeoRx will prepare and file a United States patent application(s) for any Joint Invention. Preparation, filing, prosecution and maintenance of corresponding foreign patent applications will be at the sole discretion of NeoRx. UABRF shall cooperate in expediting preparation, filing and prosecution of such patent applications.

The respective costs of such patent filings will be borne by: UABRF wholly under Section 7(a); and NeoRx wholly under Sections 7(b) and 7(c).

As used herein, the terms "inventor," "Invention," "joint inventors" and "joint invention" are defined to be consistent with those definitions established and set forth in Title 35 U.S.C. and case law pertaining thereto.

7.3 If any patent application submitted by NeoRx matures into an issued Patent and covers the Product(s) per se, UABRF shall notify NeoRx promptly in writing of any infringement of such Patent which becomes known to UABRF. NeoRx has no obligation to bring or prosecute any legal action against third parties for infringement of a Patent; however, NeoRx and UABRF may mutually agree to pursue such legal action on terms to be negotiated in good faith by NeoRx and UABRF.

ARTICLE VIII
INDEMNIFICATION

8.1 NeoRx agrees to indemnify UABRF and hold it harmless from and against suits, claims and demands whatsoever for injuries to or death of any person, damage to or loss of property alleged to have arisen out of, in connection with, or incidental to NeoRx's performance of the terms of this Agreement. In respect of NeoRx's obligation to indemnify, NeoRx shall defend suits, claims and demands brought against UABRF. NeoRx's obligation to defend shall arise upon notification to NeoRx and/or UABRF of such claim.

8.2 In respect of NeoRx's obligations set forth in Section 8.1 above, NeoRx agrees to pay, liquidate, discharge and satisfy any and all judgments, awards or expenses which may be rendered against or incurred by UABRF, including, but not limited to, all costs of suit, reasonable attorneys' fees and reasonable expenses in connection therewith, except to the extent that such judgment, award or expense is attributable, in whole or in part, to the negligence of UABRF.

ARTICLE IX
TERMINATION

9.1 This Agreement and the license granted in Article II shall have a term commencing on the effective date, unless terminated sooner in accordance with the provisions of this Agreement. Upon termination of the Agreement, all Proprietary and Confidential Information and materials in the possession of the receiving party shall be returned to the disclosing party, except that one copy of written information may be retained by the receiving party in a limited access file. If NeoRx does not file a Product License Application within five years of the effective date of the Agreement, and if this deadline is not extended by mutual agreement of the parties (see Section 3.1), the Agreement will terminate. Unless terminated sooner in accordance with the provisions of this Agreement, this Agreement shall remain in force for the longer of: (a) the last-to-expire Patent or (b) 10 years from the effective date of this Agreement.

9.2 UABRF may terminate this Agreement if NeoRx is in breach because of its failure to pay royalties due and owing or its failure to submit a royalty report as prescribed herein. In such case, UABRF shall provide written notice to NeoRx, and NeoRx shall have 30 days from receipt of the written notice to cure the breach. If the breach is not cured within such 30 day period, UABRF may give notice of termination of the agreement. In addition to UABRF's right to terminate, both parties shall have all legal and equitable remedies available to enforce the terms and conditions of this Agreement.

ARTICLE X
GENERAL PROVISIONS

10.1 The interpretation and application of the provisions of this Agreement shall be governed by the laws of the state of Washington.

10.2 Notices required to be given under this Agreement shall be in writing and shall be effective only when delivered to the addressee by mail or by facsimile at the address stated below, or at such other address as either party may hereafter state by written notice:

If to NeoRx:

Jeffrey J. Miller, Ph.D., J.D.
Vice President - Business Development and Legal Affairs
NeoRx Corporation
410 West Harrison Street
Seattle, Washington 98119
Telephone: (206) 281-7001, X518
Facsimile: (206) 284-7112

If to UABRF:

Dr. Kenneth J. Roozen
Executive Director - UAB Research Foundation
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010
Telephone: (205) 934-0622
Facsimile: (205) 934-1221

or such other address as either party may request in writing.

10.3 This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements and understandings between the parties with respect to the subject

matter hereof or information relating thereto, and neither party shall be obligated by any condition, promise, or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

10.4 Nothing contained in this Agreement shall be construed as creating any partnership or joint venture between the parties. Neither party shall be authorized to act as agent for the other, nor shall either party enter into any agreement or contract on behalf of the other as representative or agent.

10.5 This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Neither NeoRx nor UABRF shall assign this Agreement without the other's prior written consent, which shall not be unreasonably withheld. Neither party shall be deemed unreasonable if it withholds approval because of its good faith concern regarding protection of its intellectual property rights by the prospective assignee.

10.6 No waiver or modification of any of the terms of this Agreement shall be effective unless in writing and signed by both parties. A waiver by either party of any right under this Agreement shall not be deemed a waiver by that party of the same or any other right or any subsequent occasion.

10.7 If any of the provisions of this Agreement are determined to be to any extent invalid or unenforceable, the invalidity and unenforceability of that provision shall not affect the validity and enforceability of the remaining provisions of this Agreement, and the affected provision shall be construed as if it were written so as to be valid and enforceable to the maximum possible extent.

10.8 Each party and the individuals executing this Agreement on that party's behalf, represents and warrants to the other party that it has obtained any and all necessary corporate authority to make and perform this Agreement. Each party further represents and warrants to the other that it is not precluded by the terms of any other agreement from making or performing this Agreement.

10.9 Any controversy or dispute arising out of or relating to this Agreement shall be submitted to binding arbitration ~~in Seattle, Washington~~, under the then existing Commercial Arbitration rules of the American Arbitration Association. Such decision may grant legal and equitable relief, including but not limited to injunction, and may grant any other form of relief appropriate. Judgment may be obtained on the arbitration award in any court having competent jurisdiction.

10.10 In the event that any arbitration or action should be commenced to enforce, or otherwise with respect to, any of the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the other, in addition to any and all other relief to which it may be entitled, all of the prevailing party's costs and expenses thereby incurred, including reasonable attorney fees relating to legal services provided in advance or connection with any such legal proceeding or any appeal thereof. The arbitrator or court shall determine which party has, under all the circumstances, "prevailed."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed individually or, where applicable, by its duly authorized representative.

NEORX CORPORATION

Jeffrey J. Miller, Ph.D., J.D.
Vice President
Business Development and
Legal Affairs

THE UAB RESEARCH FOUNDATION

By:
Its: Executive Director

PATENT COOPERATION TREATY

INTERNATIONAL APPLICATION NO.: PCT/US92/08220	INTERNATIONAL FILING DATE: 25 September 1992
TITLE OF INVENTION: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	PRIORITY DATE PREVIOUSLY CLAIMED: 27 September 1991
NAME OF APPLICANT: NEORX CORPORATION	AGENT'S FILE REF.: 13531/47.3

REQUEST FOR WITHDRAWAL OF PRIORITY CLAIM

TO THE INTERNATIONAL BUREAU:

Applicant respectfully requests that in connection with the above-identified international application, the claim for priority based on U.S. patent application No. 07/767,254, filed 27 September 1991 be withdrawn under Rule 90bis.3. Therefore, publication of the international application under Article 21(2)(a) should not occur until March, 1994.

This withdrawal is to be effective only if the date of publication of the international application under Article 21(2)(a) is not computed from the former priority date.

Agent for the Applicant

Michael L. Levine

Michael L. Levine

Dated: February 1, 1993
STOEL RIVES BOLEY JONES & GREY
900 SW Fifth Avenue, Suite 2300
Portland, OR 97204-1268
USA
(503) 224-3380

PDX1-37394.1 13531 0047

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

HIGHLY CONFIDENTIAL

BOSTON SCIENTIFIC SCIMED, INC., and BOSTON SCIENTIFIC CORPORATION,

Plaintiffs,

vs.

CORDIS CORPORATION and JOHNSON & JOHNSON, INC.,

Defendants.

Case No. 03-283-SLR

BOSTON SCIENTIFIC SCIMED, et al.,

Plaintiffs,

vs.

CORDIS, et al., and GUIDANT, et al.,

Defendants.

Case No. 03-1138-SLR

HIGHLY CONFIDENTIAL

30(b)(6) VIDEOTAPED DEPOSITION OF ANNA LEWAK WIGHT

Taken on behalf of the Defendant

January 27, 2005

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MR. AL-SALAM: Object to the form.
THE WITNESS: Yes.
BY MR. MAS:
Q. Okay. And the first document is the Kunz and Anderson 254 patent application?
MR. JOHNSON: Same objection.
BY MR. MAS:
Q. Correct.
A. Yes.
Q. And then the second document is listed as a CIP filed as PCT. Do you see that?
A. Yes.
Q. And that one again lists only Kunz in the parentheses?
A. Yes.
Q. And you're familiar with the PCT application that was filed in 1992?
A. I'm not sure which one it was, but if you show it to me.
Q. Okay. And then the third asterisk refers to a USCIP of CIP filed January 28th of 1993?
A. Yes.
Q. And that one in parentheses has Kunz and Klein listed?
A. Yes.

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Q. And you understand that the information in the parentheses refers to the named inventors on those applications; correct?
MR. AL-SALAM: Objection. Objection, lack of foundation.
MR. JOHNSON: Objection to form, foundation.
THE WITNESS: It doesn't say so, but I would assume so.
BY MR. MAS:
Q. Thank you. Let me hand you a copy of what's been previously been marked as Kunz Exhibit 14.
(Whereupon, Kunz Exhibit-14 was placed before the witness.)
A. Thank you.
MR. JOHNSON: Thank you.
BY MR. MAS:
Q. And just back to Exhibit 13 for a moment. That letter from Ms. Leith to Miss Hicks is dated February 19th, 1993; correct?
A. I'm sorry. That other one? Yes, yes.
Q. Okay. And now moving on to Exhibit 14. Do you recognize this?
A. I don't remember if I specifically saw this letter. I just don't remember.
Q. Okay. So sitting here today you don't know

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whether you had -- had ever reviewed this document in connection with prosecution issues relating to the Kunz patents?
MR. JOHNSON: Objection, mischaracterizes her testimony.
THE WITNESS: I saw a number of documents, but I don't know if this specifically was one of the documents. So I'm -- I can't answer that.
BY MR. MAS:
Q. Okay. Let me turn your attention to the last paragraph of this letter.
A. I'm sorry. Yeah, yes. You bet.
Q. Actually, I'll refer you to the second to last paragraph.
A. Uh-huh.
Q. Could you please just read that to yourself.
(The witness reviews the exhibit.)
A. Okay.
Q. Okay. Do you recall being aware that the University of Alabama had these opinions with regard to Dr. Anderson and Dr. Kunz's contributions to their invention?
MR. JOHNSON: Objection to form, the specific that's laid in these two paragraph or generally? Vague.
THE WITNESS: At some point I became aware that

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there was -- there was, I don't know what you'd call it, a -- an issue as to the contributions in the early '90s as to Dr. Anderson and UAB.
BY MR. MAS:
Q. Okay. Do you recall being aware of the views expressed by University of Alabama in the second to last paragraph of Kunz Exhibit 14?
MR. JOHNSON: Objection to form.
THE WITNESS: I was aware of some of these -- some of this opinion. I'm not sure on every point. There are a lot of things actually mentioned in here.
BY MR. MAS:
Q. Okay. How did you become aware of it?
A. I don't remember. Probably through, you know, through documents or perhaps files or conversations with -- I don't remember how that came up.
Q. In the last paragraph the university expresses, quote,
"It is the opinion of the University of Alabama Research Foundation that Dr. Anderson should be included as an inventor on the subsequent filed patent applications, patent applications two and three as referenced above."
Do you see that?
A. Uh-huh, yes, I see that's what it says.

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Q. And if you go to the first page of Exhibit 14, you'll see the second and third patent applications that are referenced.
A. Yes.
Q. Were you aware that the University of Alabama Research Foundation expressed this opinion to NeoRx?
MR. JOHNSON: Objection to form.
THE WITNESS: I became aware that they believed he should be added on patent applications. I assume it's these two.
BY MR. MAS:
Q. And how did you become aware of that?
A. As I said, I'm not sure if it was through a conversation or through looking at -- I don't remember the circumstances.
Q. Let me have you take a look at Kunz Exhibit 15.
(Whereupon, Kunz Exhibit-15 was placed before the witness.)
And before you get to 15, I want you to just turn back to Kunz Exhibit 14 for a moment. Was this document sent to outside counsel with respect to issues concerning Dr. Anderson's role as an inventor?
A. I can't recall specifically. But if I'd had it, I would have sent it.
Q. Now, turning to Kunz Exhibit 15. Do you

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recognize this document?
A. I'm sorry. This next document. Exhibit 15. Yes.
Q. What is this document?
A. It's a letter from Bob Schroff to Ken Roozen.
Q. And it's dated June 14th, 1993; correct?
A. Correct.
Q. When did you become aware of this letter?
A. I don't remember when I became aware of this.
Q. Okay.
A. This was also before my time.
Q. Was this letter provided to outside counsel in connection with the prosecution of the Kunz patents?
MR. JOHNSON: Objection to form.
THE WITNESS: At some point this was provided to outside counsel. I don't know when it was provided to outside counsel, because I don't know when I became aware of it or had possession of it.
BY MR. MAS:
Q. Okay. Now, in the first paragraph of Exhibit Number 15 Mr. Schroff states that, quote,
"I believe you are aware through discussions with Pete Anderson and Lucy Hicks that there has been some issue as to whether Pete should remain as an inventor on recent patent applications drafted and

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submitted by NeoRx."
Do you see that?
A. Uh-huh.
Q. And then Mr. Schroff states, quote, "After several discussions we have decided that Pete will be named as an inventor on all pending applications," closed quote.
Do you see that?
A. Yes.
Q. Do you know whether that was done?
A. I'm not sure what was pending exactly at that time.
Q. Okay.
A. I know that he was added and on an application.
Q. Okay.
A. It was also this is still before, you know, over a year before I got there, so --
Q. I'm just asking what you are aware of, if anything, was done.
A. Sure.
Q. If you refer back to the prior exhibit, Exhibit 14, there's an indication of three applications in the file line; correct?
A. Yeah.
Q. Okay. Do you know if Dr. Anderson was added to

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the second and third applications listed on the first page of Exhibit 14?
A. I don't know, because I can't actually identify them. I don't -- yeah.
Q. Okay. And sitting here, do you know one way or the other whether Dr. Anderson was added to all of the pending applications as Mr. Schroff stated in this June 14th, 1993 letter?
MR. AL-SALAM: Asked and answered.
MR. JOHNSON: Objection to form.
THE WITNESS: I just said I don't know what exactly was pending. And these three I don't know exactly which cases these are. You know, it's a very large portfolio. And I haven't looked at these cases or lineages in a long time, you know.
BY MR. MAS:
Q. Were you ever -- strike that. Did you ever become aware that Dr. Anderson was not added to any of the applications that were pending at this time?
MR. AL-SALAM: Asked and answered.
THE WITNESS: Do I continue?
MR. AL-SALAM: Yes.
THE WITNESS: Oh, I don't know about these specific applications, because I don't know what they are. You know, I can't identify them just from these re lines.

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BY MR. MAS:
Q. We'll get to that. Let me hand you a copy of what's been previously been marked as Anderson Exhibit 9.
(Whereupon, Anderson Exhibit-9 was placed before the witness.)
Can you identify this exhibit?
A. I don't recall this, no, specifically.
Q. Do you recall ever seeing the June 23rd, 1993 cover letter or the attachment which forms Anderson Exhibit 9?
A. I don't remember, no.
Q. Okay.
A. As again, before I joined there.
Q. Okay. Okay. Let me hand you then a copy of a document that we'll mark as Wight Exhibit 6, which is a one-page letter bearing Bates numbers UAB 0121.
(Whereupon, a letter to Peter Anderson From Anna Lewak Wight dated September 25, 1996 was marked as Exhibit-6 for identification.)
A. Yes.
Q. Can you identify what Wight Exhibit 6 is?
A. It's a letter from myself to Dr. Peter Anderson.
Q. Okay. And the letter is dated September 25th, 1996; correct?
A. Correct.

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Q. And that's your signature at the bottom of Wight Exhibit 6; correct?
A. Yes.
Q. And you're identified as senior intellectual property counsel; correct?
A. Right.
Q. And the subject of this matter is U.S. patent application serial number 08 slash 406921?
A. Yes.
Q. And the 921 application was one of the applications in the Kunz chain; correct?
MR. JOHNSON: Objection, vague.
THE WITNESS: I don't have the tree, but I assume so.
BY MR. MAS:
Q. Okay. And in this letter you state,
"It was a pleasure talking to you Friday afternoon. I am sending you the patent application and claims we discussed on which you are being added as an inventor. Please let me know if you have any comments or questions."
Do you see that?
A. Yes.
Q. Do you recall having these discussions with Dr. Anderson and telling him that he would be added as an

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inventor to the claims in this application?
MR. JOHNSON: Objection to form, compound.
THE WITNESS: What was the question? Just do I recall?
BY MR. MAS:
Q. Yes.
A. I don't recall the conversation. I don't recall speaking to him.
Q. Okay.
A. Yeah.
Q. And the letter reflects, however, that you did have such a discussion, and that you were sending Dr. Anderson a patent application and claims that he would be added as an inventor; correct?
A. Yes.
Q. Did you add Dr. Anderson as a co-inventor on this application?
A. I believe we did add him to this one.
Q. Okay. Do you -- and why -- why was he added?
MR. AL-SALAM: Objection to the extent that that calls for attorney/client communications. If you're able to answer that without revealing such communications, you may.
MR. JOHNSON: And I'll just object to form.
THE WITNESS: I can't speak from specific

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recall, but I'm presuming it's after I had discussions with him. I don't know if I at that point had reviewed any particular documents.
BY MR. MAS:
Q. He would have been -- okay. Sorry.
A. Go ahead.
Q. Okay. Well, at this point, September 25th, 1996, you had determined that he should be added as a co-inventor on the 921 application; correct?
A. That's what this says, yes.
Q. Okay. I mean, you would have done a review of the file and made that determination before sending these materials to Dr. Anderson on September 25th of 1996; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: I would have reviewed what we had on hand and maybe speaking with him.
BY MR. MAS:
Q. Okay.
A. That would have --
Q. Would you have --
MR. AL-SALAM: Did you finish the question -- answer?
THE WITNESS: And possibly discussions with outside counsel.

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BY MR. MAS:
Q. Okay. Do you recall if outside counsel was involved in the discussions prior to this?
A. I can't recall specific discussions about this. It's a very, very large portfolio, and this was eight or nine years ago.
Q. Okay. Let me hand you a copy of what's been previously been marked as Kunz Exhibit 17.
(Whereupon, Kunz Exhibit-17 was placed before the witness.)
A. Uh-huh.
Q. Can you identify Kunz Exhibit 17 for the record?
A. Yes. It's a letter from me to Dr. Anderson.
Q. And this letter is dated December 3rd, 1996; correct?
A. Correct.
Q. And that's your signature at the bottom of the first page of Kunz Exhibit 17?
A. It is.
Q. And again, you're identified here as director intellectual property?
A. It is.
Q. Okay.
A. I am. I'm sorry.
Q. Okay. And the subject matter is identified as

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application number 08 slash 406921 and application number 08 slash 389712; correct?
A. Yeah, correct.
Q. And underneath there it says, "Therapeutic inhibitor of vascular smooth muscle cells;" correct?
A. That's the title I think, yeah.
Q. And in the letter you state, "It was a pleasure talking with you yesterday. Thank you for your cooperation in signing and returning the petitions."
Do you see that?
A. Yes.
Q. Do you recall what petitions that refers to?
A. I'm not sure what the petition was, yeah.
Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor."
Do you see that?
A. Yes.
Q. So as of this date, December 3rd, 1996, you had determined that Dr. Anderson would be named as a co-inventor on the 921 and 712 applications; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: At that time, yes.
BY MR. MAS:
Q. Okay. And when did you perform your

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investigation prior to the December 3rd, 1996 letter in which you determined that Dr. Anderson should be named as a co-inventor on the 921 and 712 applications?
MR. JOHNSON: Objection to form.
THE WITNESS: When you mean?
BY MR. MAS:
Q. Yes.
A. I can't tell you with any certainty. But it would have been, you know, when I sent them the letter or before I sent them the letter.
Q. So on or before December 3rd, 1996 you would have --
A. To the --
MR. AL-SALAM: Let him finish the question.
BY MR. MAS:
Q. You would have completed your review and made the determination that he should be added as a co-inventor on the 921 and 712 applications; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: I would have reviewed what we had in hand, and the information we had in hand, and with discussions with outside counsel we would have made this -- or they would have made this determination or we would have made this determination. And there would have been -- would have sent this to him on the information we

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had at the time.
BY MR. MAS:
Q. Okay. And based on the information you had at the time and the materials you reviewed, you determined that he should be named as a co-inventor on these two applications, the 921 and 712; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes, I assume so, since that's what it says.
BY MR. MAS:
Q. And you notified him accordingly --
A. Yes.
Q. -- via this letter?
MR. AL-SALAM: Let him finish the question.
THE WITNESS: I'm sorry.
BY MR. MAS:
Q. Correct?
A. Yes.
Q. Who besides yourself was involved in the investigation to determine whether Dr. Anderson should be added as a co-inventor on the 921 and 712 applications?
A. At this time it would have been the Schwegman firm.
Q. Do you know who -- sorry. I thought you were done.

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A. Go ahead. Go ahead.
Q. Okay. Who at the Schwegman firm?
A. I'm trying to recall. I believe Warren Woessner would have been involved, and possibly Jan Embretson.
Q. Would anyone else from NeoRx have been involved?
A. Well, presumably Dr. Kunz may have had input, but I can't specify exactly when I talked to him or --
Q. Okay. Were there any other in house attorneys at NeoRx involved?
A. I'm trying to recall. I don't think -- primarily it would have been Deb Leith before me.
Q. But Deb Leith was gone at the time?
A. Right. But I'm saying before me. I'm not sure any of the other attorneys would have been specifically involved in the inventorship. Possibly Bob -- Bob Schroff, but --
Q. Now, attached to your cover letter there are a series of pages referring to various patent applications and claims. Do you see that?
A. Yes.
Q. Let's have you turn to UAB 00084. And can you tell me what is reflected on this page?
MR. JOHNSON: I'm sorry. What page?
MR. MAS: UAB 00084.
MR. JOHNSON: Thank you.

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THE WITNESS: You mean -- oh, the second page of this exhibit.
BY MR. MAS:
Q. Yes.
A. Okay. I'm sorry. Go ahead.
Q. What is this?
A. It is a -- a claim sheet or a claim -- it's a list of the claims in the 921 patent.
Q. Okay.
A. Or 921, excuse me, application.
Q. Did you prepare this?
A. It's -- it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean.
Q. No, but did you prepare the substance of the information reported here?
A. Probably, yes. Yes, I believe I put this together.
Q. Okay.
A. Or directed my assistant.
Q. And this first page UAB 0084 continuing on to UAB 00088 refers to the 921 application; correct?
A. Yes.
Q. And on the first page UAB 00084 it lists Lawrence Kunz as the inventor?

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A. Uh-huh.
Q. And then next to it there's some handwriting that says, "Being amended to add Peter Anderson." Do you see that?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes.
BY MR. MAS:
Q. Is that your handwriting?
A. I can't tell. It could be my assistant, you know.
Q. Okay. And there's more than just claims listed here. There's a discussion of the field of invention, the abstract of the disclosure, et cetera; correct?
A. Those I believe are directly from the specification. They're not meant to be a summary of what's currently --
Q. Okay.
A. -- claimed.
Q. And then going over to Bates number UAB 00089.
A. Uh-huh.
Q. There's a section in this document dealing with the 712 application; correct?
A. Yes.
Q. And the inventors are identified as Lawrence L. Kunz and Richard A. Klein?

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A. Yes.
Q. And then there's some handwriting stating, "Being amended to add Peter Anderson"?
A. Yes.
Q. Do you see that?
A. Yeah.
Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996?
A. Uh-huh.
Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor?
MR. AL-SALAM: Object to the form of the question.
MR. JOHNSON: Same objection.
THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or to make the amendment. We don't do any of the prosecution in house, because of -- it's not feasible.
BY MR. MAS:
Q. Okay. And do you recall directing your outside counsel to make sure that Dr. Anderson is added to the 921 and 712 applications?
MR. JOHNSON: Objection to form.

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MR. AL-SALAM: Yeah, that's getting close to attorney/client privilege as well. I think I'm going to instruct you not to answer that question. If you answer it -- if the question is generally do you recall discussing the subject of it, I will let her answer yes or no to that question.

BY MR. MAS:

Q. Okay. Do you recall --

A. Which one am I answering? Okay.

Q. Do you recall generally discussing the subject of adding Dr. Anderson to the 921 and 712 applications at this time?

A. I don't recall a specific conversation regarding this. I'm just telling you what my practice would have been.

Q. Do you recall not following through on what you said you would do in Kunz Exhibit 17?

MR. JOHNSON: Objection, mischaracterization, form.

THE WITNESS: Do I answer that? Okay. I don't recall at this time not adding -- adding him or adding him. I do know that subsequently -- I learned subsequently that he has been or was added to IUS and that he was not added to HCP.

BY MR. MAS:

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Q. So you learned subsequently that he was added to the 921 application, but not added to the 712 application; is that what your testimony is?

A. Yes, because I don't recall exactly at this time.

Q. Do you recall giving a copy of Kunz Exhibit 17 to your outside prosecution counsel on or about December 3rd of 1996?

A. This exact? I don't recall.

Q. Now, how did you learn that Dr. Anderson was not added to the 712 application?

MR. JOHNSON: Objection to form.

THE WITNESS: In the prosecution there was an amendment of the claims in the 712 application that -- these were based on discussions with outside counsel, so I'm not quite comfortable -- I'm not sure how far.

MR. AL-SALAM: Don't answer the question if it was based on discussions with outside counsel.

BY MR. MAS:

Q. Okay. When did you learn that Dr. Kunz -- or strike that. When did you learn that Dr. Anderson was not added as a co-inventor to the 712 application?

A. I can't tell you specifically when.

Q. Okay. How about generally?

A. I can tell you that during the prosecution the

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claims were amended. And I don't have a specific time. And he was not added. And that has -- we've had discussions with counsel about that on various occasions, so --

Q. Okay. When was it determined that Dr. Anderson would not be added as a co-inventor?

MR. JOHNSON: Objection to form.

THE WITNESS: I don't have a specific -- specific date or specific -- it would have -- I don't have a specific time or date.

BY MR. MAS:

Q. Okay. How about generally?

MR. JOHNSON: Same objection.

THE WITNESS: I don't know.

BY MR. MAS:

Q. Was Dr. Anderson ever told that he was not going to be added as a co-inventor to the 712 or -- 712 application after December 3rd, 1996?

A. I don't know.

Q. You don't know?

MR. AL-SALAM: Asked and answered.

BY MR. MAS:

Q. Why don't you know?

MR. JOHNSON: Objection.

MR. AL-SALAM: Yeah, object to the form of that

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question.

THE WITNESS: I can't answer that question.

BY MR. MAS:

Q. Well, on December 3rd -- okay. On December 3rd, 1996 you informed Dr. Anderson that he was being named as a co-inventor on the 921 and 712 applications; correct?

A. Yes.

Q. And at some subsequent time you made a determination not to add Dr. Anderson to the 712 application; correct?

MR. JOHNSON: Objection to form, mischaracterization.

THE WITNESS: At some point a determination was made. It could have been made by outside counsel or jointly. I don't recall the specific circumstances.

BY MR. MAS:

Q. Okay. And you have no knowledge of ever communicating to Dr. Anderson that he would not be added to the 712 application after that determination was made?

MR. JOHNSON: Objection, asked and answered three times now.

BY MR. MAS:

Q. Is that your testimony?

A. I do not recall myself specifically notifying him. Whether someone else notified him or whether

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assignee NeoRx Corporation; correct?
A. Yes.
MR. JOHNSON: Objection, lack of foundation.
THE WITNESS: It states that.
BY MR. MAS:
Q. Okay. Do you know if anyone at the UAB Research Foundation was contacted regarding this assignment document?
A. Oh, I --
MR. JOHNSON: Objection, lack of foundation, calls for speculation.
THE WITNESS: I wouldn't know. This is --
BY MR. MAS:
Q. Okay.
A. Yeah.
Q. Do you have an understanding as to how Dr. Anderson could sign this assignment, given that had he previously assigned all his rights to his invention to the University of Alabama Research Foundation?
MR. AL-SALAM: Objection, vague, calls for speculation.
MR. JOHNSON: Objection to form, and a lack of foundation.
THE WITNESS: This -- no.
BY MR. MAS:

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Q. Now, I want you to take a look at the last two pages of Anderson Exhibit 10. Actually, the last three pages, which are the assignment and the signatures.
A. This file history goes from most recent to -- most recent.
Q. Okay.
A. I'm sorry. Go ahead.
Q. I want you to take a look at the assignment, the three pages of the assignment that are attached to Anderson Exhibit 10. Do you have that?
A. Yes.
Q. Okay. And I want you to have that out, and also at the same time look at the assignment in the actual file history.
A. I have -- I have this out.
Q. You have it in front of you.
A. Okay.
Q. Okay?
A. Yeah.
Q. Now, the assignment in the file history at GCY 712 does not include the reference to U.S. serial number 07 slash 767254 that was in the assignment sent to Dr. Anderson?
MR. JOHNSON: Objection, form, lack of foundation.

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BY MR. MAS:
Q. Go to the bottom --
A. I'm getting -- I'm lost here.
Q. Okay. You have Anderson --
A. I'm looking at this one, yeah.
Q. Good. Take a look at the first paragraph of the assignment in Anderson 10.
A. Yes.
Q. Do you see that document refers to the 254 application at the very end of the first paragraph?
MR. JOHNSON: Objection, lack of foundation.
THE WITNESS: Here?
BY MR. MAS:
Q. In Anderson Exhibit 10, yes.
A. Yes.
Q. Do you see that?
A. Yes.
Q. Now, that reference is missing in the assignment in the file history itself; correct?
MR. JOHNSON: Objection, lack of foundation.
THE WITNESS: I -- this is the file history one?
BY MR. MAS:
Q. Yes.
A. The GC -- yes.
Q. Okay. Do you know why that reference is not --

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to the 254 application is not in the assignment contained in the file history?
MR. JOHNSON: Objection to form.
THE WITNESS: No.
BY MR. MAS:
Q. Okay. Do you know whether Dr. Anderson was asked to sign a new assignment in which the reference to the 254 application was deleted?
MR. JOHNSON: Objection to form.
THE WITNESS: No, I don't know.
BY MR. MAS:
Q. Okay.
A. I'm just trying to --
Q. If you look at the signature of Dr. Anderson on page 3 of the assignment in the Anderson Exhibit 10 --
A. Hold on. Yeah.
Q. And if you look at the signature in the file history copy of the assignment, those are the same signatures; correct?
MR. JOHNSON: Objection, form, lack of foundation, calls for expert testimony.
BY MR. MAS:
Q. Well, let me ask you to look at --
MR. AL-SALAM: Did you have an answer?
THE WITNESS: No, I have no idea.

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BY MR. MAS:
Q. Let me ask you to look at both signatures of Dr. Anderson and the dates on the assignment in the file history and the assignment on Anderson Exhibit 10.
A. Yes.
Q. Would you agree those are the same signatures?
MR. AL-SALAM: Same objections.
MR. JOHNSON: Objection to form, calls for expert testimony, lack of foundation.
THE WITNESS: I can't -- I can't -- I can't say.
BY MR. MAS:
Q. Okay. Look at the other signatures on that page. Do you see any differences -- strike that.
Do you see any differences in the signatures on page 3 of the assignment attached to Anderson 10 as compared to the signatures on file history copy at GCY 714?
MR. JOHNSON: Objection to form, lack of foundation, and calls for expert testimony.
THE WITNESS: They look similar.
BY MR. MAS:
Q. Do you know if the inventors were provided a subsequent declaration to sign that deleted reference to the 254 application?
MR. JOHNSON: Objection to form, lack of

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foundation.
THE WITNESS: I -- I don't know.
BY MR. MAS:
Q. Do you know why the 254 application was deleted from the assignment?
MR. AL-SALAM: Asked and answered.
THE WITNESS: I don't --
MR. JOHNSON: Objection to form.
BY MR. MAS:
Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new document?
MR. JOHNSON: Objection to form.
THE WITNESS: I don't -- I don't know. No. Not to my knowledge.
BY MR. MAS:
Q. If -- if the assignment had been changed, would you have expected the inventors to be contacted to sign a new assignment?
A. Yes. At times we will amend documents if they're countersigned.
Q. Okay. And do you know if the inventors were contacted here to sign a new assignment?
MR. JOHNSON: Objection, lack of foundation,

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form.
THE WITNESS: I don't know. This was -- this was -- which one was this? No.
BY MR. MAS:
Q. Okay. Can you turn to GCY 716 in the file history. And again, we're back in Wight Exhibit 10, I think. Wight Exhibit 11. I'm sorry. Okay.
Do you have that GCY 716?
A. Yes.
Q. Okay. And this is the page that starts the file wrapper continuation application for the 451?
A. 796?
Q. Yeah, 716.
A. Oh, I'm sorry.
Q. I may have misspoke. I apologize. And when you're there, I'll just ask a new question.
A. Yes.
Q. Okay. This is a request for file wrapper continuing application; correct?
A. Yes.
Q. And the patent office date stamp is May 25th, 1995; correct?
A. Yes.
Q. And then it indicates that the document was filed -- or strike that. And then going to GCY 720, a few

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pages further.
A. Yes.
Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner?
A. Yes.
Q. And the filing date's identified as May 25th, 1995?
A. Yes.
Q. And the first named inventor Kunz?
A. Yes.
Q. And then if you could turn to page GCY 769.
A. I'm sorry. 769?
Q. Yes. Do you have that?
A. Yes.
Q. And in the lower right-hand corner there's a date of May 29th, 1996. You see that? The stamp at the bottom.
A. Oh, 5/29/96?
Q. Yes.
A. Yeah.
Q. And this is a petition to correct inventorship --
A. Yes.
Q. -- pursuant to 37 CFR 1.48; correct?
A. Uh-huh.

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MR. AL-SALAM: Did you answer that?
THE WITNESS: Oh, I'm sorry. Yes.
BY MR. MAS:
Q. And the petition concludes that, "Richard Klein, David Grainger, James Metcalfe, Peter Weissberg and Peter Anderson are no longer inventors of the subject matter claimed in the above identified application."
You see that?
A. Yes.
Q. Were you involved with that determination?
A. I'm not sure which case this is, the 793. Is there an NeoRx designation on here? Hold on. There's not. I would -- let's see. I can't identify that specific case, but I don't have our reference number.
Q. Okay.
A. But I would have been -- yeah, I would have -- I'm sorry. Go ahead.
MR. AL-SALAM: Did you finish your answer?
THE WITNESS: What was the question again? It was --
BY MR. MAS:
Q. Were you involved?
A. To some extent I would have been involved in this, yes.
Q. Okay. Let me perhaps help you. If you could

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turn to GCY 776.
A. Yes.
Q. And this is the amendment that was filed in May 1996; correct?
A. I'm looking at it. That's -- it says, yes.
Q. And the first paragraph of the amendment indicates that the remaining inventors shall be Lawrence Kunz and John M. Reno?
A. Yes.
Q. And then in the third paragraph it states,
"In April 1996 the legal representatives of NeoRx Corporation and the undersigned outside patent counsel concluded that claims directed to particular embodiments of the invention of which Richard Klein, David Grainger, James C. Metcalfe, Peter L. Weissberg and Peter Anderson were co-inventors which were included in the application at the time of filing had been canceled in the amendments filed July 26th, 1995 and September 21, 1995;" correct?
A. That's what it says, yes.
Q. Now, were you -- you were one of the legal representatives --
A. At the time.
Q. -- of NeoRx involved?
A. In May of '95?

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Q. April '96.
A. I'm sorry. Oh, filed. Yeah.
Q. Okay. And --
A. Which case this is.
Q. How was the conclusion reached?
MR. JOHNSON: Objection to form.
THE WITNESS: I can't state on this particular case, because I can't recognize, unless I have the patent in front of me and I know which case this is for or a designation.
But typically we would have discussed this with outside counsel and perhaps with internally and looked at any documents that we had relating to this and then made the determination.
BY MR. MAS:
Q. Did you interview the -- the inventors that remained and the inventors that you deleted?
A. I'm not sure if we did.
Q. Did you communicate to the inventors that were going to be deleted that you had determined that they should not be co-inventors any further on this application?
MR. JOHNSON: Objection to form.
THE WITNESS: Not necessarily.
BY MR. MAS:

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Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson was being deleted?
A. I don't know. But I also -- I don't know. I don't know which case this is. We don't use the serial number references.
Q. In connection with these inventorship reviews, would you have provided documents in your internal files to outside counsel to review?
A. If we had documents, yes.
Q. Then let me just have you turn to GCY 779.
A. Yes.
Q. And this is another petition to correct inventorship filed in this case?
A. Yes.
Q. And in this petition you've requested that John Reno be deleted as a co-inventor?
A. Yes.
Q. Correct? Then if you turn to GCY 812. There's a notice of allowability in the case?
A. Okay. Yes. Where's the patent? Yes.
Q. Okay. We're going to put this file away now, and we're going to move on to another one.
MR. AL-SALAM: Ed, is this a good time to break for lunch?

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MR. MAS: Sure.
THE VIDEOGRAPHER: The time is 12:24 p.m. Going off the record.
(Lunch recess taken.)
THE VIDEOGRAPHER: Back on record. The time is 1:32 p.m.
BY MR. MAS:
Q. Ms. Wight, I'd like to follow up on a few items we went over before the break. Do you have Anderson Exhibit 10 in front of you?
A. I do.
Q. Okay. And I'd also now like to hand you a copy of Anderson Exhibit 11. Oh, let me have that one.
(Whereupon, Anderson Exhibit-11 was placed before the witness.)
Ms. Wight, is Anderson Exhibit 11 the assignment that was recorded in the patent office in the 451 application?
A. Number 11, yes.
Q. Okay. Now, going back to exhibit -- Anderson Exhibit 10 for a moment. The individual that sent this assignment back to Dr. Anderson is Sue Lintott.
Who was Sue Lintott in November of 1994?
A. She was a patent paralegal that had been working in the office.

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Q. Okay. She worked under your direction?
A. At that time -- when was this? Yes, I think I'd started the week before.
Q. Okay. Now, turning to the assignment. And why don't you place before you the first page of the assignment that is included in Anderson Exhibit 10, and then the first page of the assignment that was submitted to the patent office, which is Anderson Exhibit 11.
Do you have those before you?
A. I do.
Q. And again, in the assignment document in Anderson Exhibit 10 there's a reference to the priority claim to the 254 application at the bottom of the first paragraph?
A. Yes.
Q. And that is not in the assignment that was submitted to the patent office; correct?
MR. JOHNSON: Objection, lack of foundation.
THE WITNESS: Yeah.
BY MR. MAS:
Q. Okay. So the clause which reads, quote, "Which application in part discloses in claimed subject matter disclosed in U.S. serial number 07 slash 767254 filed September 27, 1991 and now abandoned," that's deleted from the assignment which forms the first page of Anderson

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Exhibit 11; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes.
BY MR. MAS:
Q. Okay. Now, turning -- and let me ask you this. The first word and last word on the -- on the assignments in Anderson Exhibit 10 and Anderson Exhibit 11 are the same; correct?
A. The first word, could you repeat that? The first word and the last word?
Q. Yes, the first word "whereas" and the last word "claim" are the first and last words on both assignment documents; correct?
MR. AL-SALAM: You're just talking about this page?
BY MR. MAS:
Q. Yes, page 1.
A. Oh, yes.
Q. And if you turn to page 2 in the assignments contained in Anderson 10 and 11, they both start with the word "priority;" correct?
A. Yes. Correct.
Q. And now if you look at the signatures that are on page 2 of both assignment documents, they're the same; correct?

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MR. JOHNSON: Objection.
MR. AL-SALAM: Asked and answered.
MR. JOHNSON: Formation, foundation, asked and answered.
THE WITNESS: They appear similar, yes.
BY MR. MAS:
Q. Okay. In fact, they appear exactly the same; correct?
MR. JOHNSON: Objection to form, lack of foundation, calls for expert testimony, and has been asked and answered several times.
THE WITNESS: They look similar, yes. They look similar.
BY MR. MAS:
Q. Can you point out a single difference?
MR. JOHNSON: Objection to form.
THE WITNESS: No.
BY MR. MAS:
Q. The dates are exactly the same; correct?
A. They are.
Q. Turning to page 3 of the two assignment documents, the signatures are the same; correct?
MR. JOHNSON: Objection to form, lack of foundation.
THE WITNESS: They appear the same.

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BY MR. MAS:
Q. Okay. The dates are the same; correct?
MR. JOHNSON: Same objection.
THE WITNESS: Yes.
BY MR. MAS:
Q. Do you know who put this document together at your office?
A. No, I do not.
Q. Okay. Do you know whether the first page was simply redacted and the same signatures attached to the first page of the assignment?
MR. JOHNSON: Objection, lack of foundation.
THE WITNESS: I don't know.
BY MR. MAS:
Q. Okay.
A. I don't know.
Q. Would that have been proper conduct to replace the first page of the assignment and attach the signatures that had been previously made to the prior document?
MR. JOHNSON: Objection to form, argumentative.
MR. AL-SALAM: Vague.
MR. JOHNSON: Vague as to proper conduct.
THE WITNESS: You mean to substitute in a page?
BY MR. MAS:
Q. Yes.

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A. Not without the permission of the inventors I don't think, yes.
Q. Okay. And to your knowledge -- let me ask this again. Do you have any knowledge that the inventors were contacted and advised that you were -- that NeoRx was substituting a new first page to the assignment and attaching their signatures to the assignment and submitting it to the patent office?
MR. JOHNSON: Objection to form, assumes facts not in evidence.
THE WITNESS: I have no knowledge either way.
BY MR. MAS:
Q. Okay. Do you have knowledge that Dr. Anderson was never notified that his signature was being used and attached to a new first page assignment?
MR. JOHNSON: Objection to form, calls for speculation of what Dr. Anderson knew.
MR. AL-SALAM: Yeah, assumes facts not in evidence.
THE WITNESS: I don't know what Dr. Anderson knew.
BY MR. MAS:
Q. Would it have been proper conduct before the U.S. Patent Office to substitute a new first page to this assignment and attach signatures that were done for a

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prior -- prior document?
MR. JOHNSON: Objection to form.
THE WITNESS: I don't think so, not without the inventors agreeing.
BY MR. MAS:
Q. Okay.
A. I don't -- yes.
Q. And again, sitting here you have no knowledge that the inventors were ever contacted and advised that a new first page to this assignment redacting a priority reference to the 254 application had been made to the assignment; correct?
MR. JOHNSON: Objection, lack of foundation, and mischaracterization.
MR. AL-SALAM: Asked and answered as well.
THE WITNESS: No, I have no knowledge.
BY MR. MAS:
Q. Okay. You can put those documents on the side for the moment. And we're going to mark a new exhibit, Wight Exhibit 12.
(Whereupon, a file history for 08/389,712 was marked as Exhibit-12 for identification.)
And I'll represent that this is the file history for the 712 application or more formally U.S. serial number 08389712. And it has Bates numbers GCY 2651

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through 3167. Did I misread the number?
MR. JOHNSON: I think you meant 70.
BY MR. MAS:
Q. Okay. And I'd like to have you turn to page GCY 2652.
A. Yes.
Q. And do you see that this is a copy of the file history for the 712 application?
A. Yes.
Q. And the filing date's identified as February 15th, 1995; correct?
A. Yes.
Q. And the application is a CIP of the 669 application; correct?
A. Yes.
Q. Okay. And then there's other patent applications that are referenced there. Let me have you turn to page GCY 2857. You have that? Are you there?
A. I'm sorry. Yes.
Q. Okay. The inventors on the 712 application at this time are identified as Mr -- Dr. Kunz and Mr. Klein?
A. Yes.
Q. And now if you could turn to GCY 2929.
MR. JOHNSON: Did you say 2929?
MR. MAS: Yes.

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MR. JOHNSON: Thank you.
THE WITNESS: Yes.
BY MR. MAS:
Q. And this is part of an office action; correct?
A. Yes.
Q. Do you see item 4 at the bottom of 2929 where the examiner has raised a rejection based on obviousness type double-patenting?
A. Yes.
Q. And the rejection is over the claims of co-pending application 08450793?
A. Yes.
Q. Okay. What's a double-patenting rejection?
MR. AL-SALAM: Object to the extent it calls for legal -- for expert testimony or legal conclusion.
MR. JOHNSON: Same objection.
THE WITNESS: It's patenting the same thing twice, essentially.
BY MR. MAS:
Q. Could you turn to page GCY 2959?
A. Excuse me. Yes.
Q. And do you see at the bottom of 2959 in this response it states, quote,
"This amendment is accompanied by a petition pursuant to 37 CFR 1.48 to correct the inventorship

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of the above-identified application from the joint inventorship of Lawrence Kunz and Richard Klein to the joint inventorship of Lawrence Kunz and John Reno."
Do you see that?
A. I do.
Q. And this amendment was signed on May 23rd, 1997; correct?
A. Yes.
Q. Now, if you could turn to GCY 2968. Okay. And you see that this is a consent of assignee to correct inventorship in the 712 application?
A. Yes.
Q. And this document was signed by you on April 23rd, 1997?
A. Yes.
Q. Okay. And in this document on behalf of NeoRx you state that, "NeoRx consents to the change of inventorship in the above-identified application from the joint inventorship of Lawrence Kunz and Richard Klein to the joint inventorship of Lawrence Kunz and John M. Reno;" correct?
A. Yes.
Q. And then if you turn to the next page GCY 2969, you see a certificate under 37 CFR 3.73B?

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A. Yes.
Q. And again, this document was signed by you on behalf of NeoRx?
A. Yes.
Q. On April 23rd, 1997; correct?
A. Yes.
Q. And in this document you state in the second paragraph that you "have reviewed the documents in the chain of title of the patent application identified above, and to the best of my knowledge and belief title is in the assignee identified above;" correct?
A. Yes.
Q. And the assignee identified above is NeoRx Corporation?
A. Yes.
Q. Okay. Now, if you turn back to GCY 2966.
A. Yes.
Q. And this is the petition that went along with these other papers to correct the inventorship pursuant to 37 CFR 1.48A; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes.
BY MR. MAS:
Q. And it's dated April 15th, 1997; correct?
A. Yes.

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Q. Okay. And at the bottom of GCY 2966 this document states that, "In early 1996 the complete record of the parent application of the above-identified application was reviewed by senior intellectual property counsel of NeoRx Corporation."
You see that?
A. Uh-huh.
Q. And you were senior --
A. Yes.
Q. -- intellectual property counsel at NeoRx at that time; correct?
A. Yes.
Q. And immediately -- it states,
"Immediately subsequent to the review the senior intellectual property counsel of NeoRx Corporation and outside patent counsel conducted a legal and factual analysis to determine whether the named inventors were the actual inventors of the subject matter claimed in the above-identified application;" correct?
A. Yes, that's what it says.
Q. So as you're stating here to the patent office, you had reviewed the complete record of the parent application to the 712 application; correct?
A. Yes. That's what it says, yes.

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Q. And this states that this analysis was done in early 1996; correct?
A. Yes.
Q. And then going on to the next page GCY 2967 it states, quote,
"In April 1996 the senior intellectual property counsel of NeoRx Corporation and outside patent counsel concluded that claims directed to a particular embodiment of the invention of which Richard A. Klein was a co-inventor were never presented in the above-identified application;"
correct?
A. Uh-huh, yes.
Q. Now, in December of 1996 you had told Dr. Anderson that he was being added as a co-inventor to the 712 application; correct?
MR. JOHNSON: Objection to form.
BY MR. MAS:
Q. And that was in the letter Kunz 17, which was marked earlier.
A. Okay. Can you repeat the question?
Q. Ms. Wight, isn't it true that in December of 1996 you informed Dr. Anderson that he was being added as a co-inventor to the 712 application?
A. In December of '96 you said?

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Q. Yes.
A. I'm trying to recall the letter. I think it was December of '96.
Q. Okay. And now a few months later in April of 1997 NeoRx petitioned the patent office to correct the inventorship of the 712 application; correct?
A. Yes.
Q. And in the petition that was submitted to the patent office, NeoRx did not, in fact, add Dr. Anderson as a co-inventor to the 712 application; correct?
A. Correct.
Q. Did you ever tell Dr. Anderson that a petition for correction was filed in the 712 case, but that he was left off?
A. I don't recall.
Q. Okay. Now, in the petition that was filed in April of 1997 NeoRx refers to an analysis that you performed in early 1996; correct?
A. Yes.
Q. And according to the petition, your conclusion was that Dr. Kunz and Dr. Reno should be the inventors on the 712; correct?
A. Yes.
Q. And that Dr. Klein should be removed; right?
A. Yes.

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Q. Now, this document was filed approximately a year later in April of 1997; correct?
A. Yeah.
Q. Now, in the petition NeoRx never told the patent office that it later determined in December 1996 that Dr. Anderson should be added as a co-inventor to the 712 application; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: No.
BY MR. MAS:
Q. Okay. NeoRx makes no mention of the analysis that you conducted in December of 1996 or the information that you provided to Dr. Anderson at that time stating that he was going to be added as a co-inventor; correct?
MR. JOHNSON: Objection to form, mischaracterization.
THE WITNESS: Correct.
BY MR. MAS:
Q. Okay. Now, if Dr. Anderson had been added to the 712 application as you said you would do in December of 1996, then UAB would have had rights to this application; correct?
MR. JOHNSON: Objection, hypothetical, calls for --
MR. AL-SALAM: Lack of foundation.

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THE WITNESS: Yes.
BY MR. MAS:
Q. Because Dr. Anderson had assigned all of his rights in his invention to the University of Alabama Research Foundation by that point; correct?
MR. JOHNSON: Objection, calls for a legal conclusion, and mischaracterization of the documents.
THE WITNESS: Yes.
BY MR. MAS:
Q. And by not adding Dr. Anderson to this application in -- strike that.
And by not adding Dr. Anderson as an inventor in the 712 application, NeoRx would be the only assignee; correct?
MR. JOHNSON: Objection, form.
THE WITNESS: Yes.
MR. MAS:
Q. Now, do you know why NeoRx never informed the patent office of its inventorship review that it had performed in the December 1996 time frame?
MR. JOHNSON: Objection, lack of foundation, mischaracterization.
THE WITNESS: No.
BY MR. MAS:
Q. Okay. Do you know why it only informed the

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patent office of the inventorship review that it had performed in early 1996, that is April of 1996?
A. Yes.
Q. And why was that?
A. I don't recall specifically, but the inventorship change was apparently to the -- these inventors here that are listed.
Q. And that was the analysis you conducted in April of 1996; correct?
A. Let me look. Yes. And with the further amendment.
Q. Okay. And by 19 -- by December of 1996 your conclusions with regard to inventorship had changed from that you had concluded in April of 1996?
MR. JOHNSON: Objection to form, compound, vague.
THE WITNESS: Could you restate that?
BY MR. MAS:
Q. Yes. By December of 1996 your conclusions with regard to inventorship had changed from your prior conclusions in April of 1996; right?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes, according to --
BY MR. MAS:
Q. Yes, in fact --

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MR. AL-SALAM: Did you finish your answer?
THE WITNESS: Yes, but I'm not -- I don't recall which claims were in the case at that time.
BY MR. MAS:
Q. Okay. In fact, as of December of 1996 you concluded that Dr. Anderson should be a named co-inventor on the 712 application?
MR. JOHNSON: Objection to form.
BY MR. MAS:
Q. Right?
MR. JOHNSON: Objection to form.
THE WITNESS: I'm trying to make sure. Yes.
BY MR. MAS:
Q. Okay. Now, when you told Dr. Anderson in December of 1996 that he should be a co-inventor on the 712 application, were you being honest with Dr. Anderson?
MR. AL-SALAM: Objection to the form of the question.
THE WITNESS: I object to that.
MR. JOHNSON: Form, argumentative.
MR. AL-SALAM: Yeah, it assumes -- misstates the testimony as well.
BY MR. MAS:
Q. Were you being honest with Dr. Anderson when you told him in December of 1996 that he should be a

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co-inventor?
MR. AL-SALAM: Same objections.
MR. JOHNSON: Same objections.
THE WITNESS: Whatever information I had at the time when I communicated with Dr. Anderson would have led me to believe that he was an inventor at that time. And that would have been an honest statement of my understanding at that time.
BY MR. MAS:
Q. Okay. You never told the patent office of that inventorship determination that you made in December of 1996; correct?
MR. JOHNSON: Objection, form.
MR. AL-SALAM: Object to the form, asked and answered.
THE WITNESS: I would -- I did not inform the patent office, no. But the inventorship determination may have changed or additional documentation may have come to light. There may have been additional conversations. I can't remember this far back as to what happened exactly at that time.
BY MR. MAS:
Q. Well, but in fact, you refer all the way back to a inventorship analysis that you performed over a year before the April filing in 1997?

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MR. JOHNSON: What was the question?
THE WITNESS: This was eight years ago.
BY MR. MAS:
Q. Right. But what I'm saying is in your submission to the patent office in April of 1997 you refer to a inventorship analysis that you performed a year earlier in April 1996?
A. Yes.
Q. And you make no mention at all of the changed analysis that you had in December of 1996?
MR. JOHNSON: Objection to form, mischaracterization.
THE WITNESS: If there was a change in determination, it would not have been -- we would not have informed the patent office we made a determination and we changed it or we changed it. You wouldn't inform the patent office unless it was relevant to an inventorship change.
BY MR. MAS:
Q. But --
A. But I don't recall particular circumstances. So you're asking me to speculate on something I don't recall from eight years ago.
Q. Okay. Now, there's no mention in your submission to the patent office about some additional

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inventorship analysis that was performed after December of 1996; correct?
MR. JOHNSON: Objection to form, asked and answered several times.
THE WITNESS: About -- say that again.
BY MR. MAS:
Q. Yes. Well, we know that you believe that Dr. Anderson should be a co-inventor of this application as of December 3rd, 1996; correct?
A. Yes.
Q. Okay. Now, in your submission to the patent office you don't tell them about any further analysis that was performed between December of 1996 and April of 1997; correct?
MR. JOHNSON: Objection, mischaracterization that it's her petition.
THE WITNESS: Actually, we do. It says in February of 1997.
BY MR. MAS:
Q. Right. And these claims with regard to taxol, that had nothing to do with Dr. Anderson; correct?
A. Correct.
Q. Okay. In fact, this reference here is to the issue of whether John Reno was a co-inventor; correct?
A. Yes.

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Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor?
MR. JOHNSON: Objection to form.
THE WITNESS: If I understand correctly, you're asking if there was mention in this petition about the inventorship determination or re-determination about Dr. Anderson.
BY MR. MAS:
Q. Where is that? Where is there --
A. I'm just saying that's what you're -- is that what you're asking me?
Q. Yes, yes.
A. No, that would not be in here.
Q. Okay. You mention that you may have seen additional documents that changed your opinion. Is there any reference to that in this document?
A. There would not be a reference to that in this document. It wouldn't be appropriate, as far as I can tell.
Q. Do you know why Dr. Anderson was left off after you had told him in December, just four months earlier, that he would be added as a co-inventor?
MR. JOHNSON: Objection, asked and answered

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several times before lunch.
THE WITNESS: I can answer as to why Dr. Anderson was not on the claims of the issued patent. I can't tell you exactly when the amendments occurred or when the final claims issued.
BY MR. MAS:
Q. Okay. Well, I'm asking you right now with regard to the period of time just months after you told Dr. Anderson that he would be added as a co-inventor, do you know why he was not added as a co-inventor?
MR. JOHNSON: Objection to the form, asked and answered.
THE WITNESS: I do not know why at this time he was not added.
BY MR. MAS:
Q. Okay. Didn't NeoRx want to keep Dr. Anderson off these patents so that NeoRx would have the entire right, title and interest to these patents?
MR. JOHNSON: Objection --
THE WITNESS: No.
MR. JOHNSON: -- to form, argumentative.
BY MR. MAS:
Q. Didn't NeoRx want to keep Dr. Anderson off these patents because it was seeking to license or assign these patents to another party?

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A. No.
Q. Okay. Now, you never did add Dr. Anderson to the 712 application?
A. No.
Q. Okay. Did you ever tell Dr. Anderson why throughout the entire prosecution following December 1996 that he was never added to the 712 application?
MR. JOHNSON: Objection. You've asked that question three or four times already.
THE WITNESS: I don't recall whether we told him or not, but I don't have any recollection of it.
BY MR. MAS:
Q. Okay. Why -- why didn't NeoRx not follow through on what they had told Dr. Anderson?
MR. AL-SALAM: That's been asked a number of times. You're wasting a lot of time.
MR. JOHNSON: Objection to form, asked and answered.
THE WITNESS: I don't know. We don't always notify every inventor of inventorship changes.
BY MR. MAS:
Q. No. My question was, why didn't you add Dr. Anderson?
MR. AL-SALAM: That one's been asked a million times.

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MR. JOHNSON: Objection to form, asked and answered.
THE WITNESS: Because I'm not clear as to timing, I can tell you that I know that the claims were amended at one point in the issued claims based on information we had and discussions with outside counsel, Dr. Anderson would not be named on this 712 application or patent, excuse me.
BY MR. MAS:
Q. Now, the 712 application resulted in the 009 patent; correct?
A. Yes.
Q. Okay.
A. I don't have it in front of me.
Q. How did you reach or arrive at your determination that Dr. Anderson should not be a co-inventor on this patent?
MR. JOHNSON: Objection to form, asked and answered.
THE WITNESS: Based on discussions with outside counsel and a review of documents that we had in our possession, we made the determination that Dr. Anderson was not an inventor on the 009 patent.
BY MR. MAS:
Q. What documents did you review?

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A. We reviewed invention disclosures, the -- there was a -- a document as between Dr. Anderson and Dr. Kunz as to early contributions, and at some -- those are the primary documents.
Q. Okay. Did you talk to Dr. Kunz?
A. On a number of occasions.
Q. About this issue?
A. About the 009 patent claims and inventorship on them?
Q. Yes.
MR. AL-SALAM: It's a yes or no question. Be careful not to disclose attorney/client communications.
THE WITNESS: Did I speak to Larry Kunz; is that what you asked me?
BY MR. MAS:
Q. Yes.
A. Yes.
Q. Okay. What did you discuss with Dr. Kunz?
MR. AL-SALAM: Instruct you not to answer.
BY MR. MAS:
Q. Did you speak with Dr. Anderson about this issue?
A. I don't recall speaking with Dr. Anderson.
Q. Now, these were the same documents that you reviewed when you made the determination in December of

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1996 that Dr. Anderson should be named as a co-inventor; correct?
MR. JOHNSON: Objection to form, mischaracterization of the former testimony.
THE WITNESS: I actually don't know if those were the same documents.
BY MR. MAS:
Q. Okay. Well, you certainly had reviewed those documents at some point, because in April of 1996 you had reviewed the quote, "complete record of the application;" right?
MR. JOHNSON: Objection, vague.
THE WITNESS: The complete record meaning the file history? I mean, you're saying -- yes.
BY MR. MAS:
Q. I don't know what -- did you review these invention disclosures and letters from Dr. Anderson and Dr. Kunz before December 3rd of 1996?
A. I reviewed whatever I had in our possession at the time. I don't know if everything was in our possession at that time or later. The documents are not always all in one place.
There may be things in, for example, with Dr. Schroff or with Dr. Kunz or other files. So there's no way for me to know if we had everything at one time. And

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things do come sometimes not all at the same time.
Q. Do you recall having reviewed anything new in this later analysis?
A. I don't recall in this specific time frame, but I do recall receiving documents over the prosecution that may have been related to this. Everything did not come in one package at the beginning of these prosecutions. These are very long and complex cases.
Q. Now, what was it about the final claims that differed from the claims pending in December of 1996 that caused you to exclude Dr. Anderson as an inventor on this application?
A. May I see the claims?
Q. Yeah.
A. Are they in --
Q. You --
A. I'm sorry.
MR. AL-SALAM: Can you point her to the claims.
BY MR. MAS:
Q. The 009 patent is Klein Exhibit 7, which I gave you earlier.
A. 009?
Q. Yes.
A. This patent --
MR. AL-SALAM: I'm sorry.

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MR. JOHNSON: Can we read back the question or is there --

BY MR. MAS:

Q. Yes. I want you to have before you the 009 patent. Do you have that?

A. I do.

Q. And you have those claims of that patent; correct?

A. Yes.

Q. And then I'd like you to take a look at the claims that were existing in December of 1996, Kunz Exhibit 17.

A. Do I have Kunz Exhibit 17 in here?

Q. Yes, you do.

A. The claims in the 009 patent are directed to a -- the concept of Biostenting, which is the contraction or migration.

Q. Is that all that they're directed to?

MR. JOHNSON: Objection, calls for a legal conclusion.

MR. AL-SALAM: Also vague.

THE WITNESS: They all include the Biostenting. We called it Biostenting -- contraction or migration Biostenting concept. I'm looking at the independent claims. Excuse me.

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BY MR. MAS:

Q. So all of the independent claims in the 009 patent require Biostenting?

MR. JOHNSON: Objection, vague.

BY MR. MAS:

Q. Correct?

MR. JOHNSON: Objection, vague, calls for a legal conclusion.

THE WITNESS: Oh, I'm sorry. There is a claim -- which one is that. With the exception of -- well, I don't know if that's -- let me look. Claim 14 is a cytocidal two-step process. The others are all Biostenting.

BY MR. MAS:

Q. Okay.

A. To the extent I can look at these this quickly.

Q. Okay. So you believe that all of the independent claims, but for claim 14, require Biostenting; correct?

MR. JOHNSON: Objection to form, calls for a legal conclusion regarding the claim terms.

THE WITNESS: Can I answer that?

MR. AL-SALAM: Yes, you may.

MR. JOHNSON: If you can.

THE WITNESS: The claims are directed to

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Biostenting in our -- what we would -- what we would consider Biostenting.

BY MR. MAS:

Q. Okay. And what would you consider Biostenting?

A. It's the --

MR. JOHNSON: Objection to form.

THE WITNESS: Okay. It's the contraction or migration concept where an artery is -- remains in the open position or stented open.

BY MR. MAS:

Q. And is that as a result of the therapeutic agent?

A. Yes.

Q. And is it your belief that Dr. Anderson had no contribution whatsoever to the Biostenting aspect?

MR. JOHNSON: Objection to form.

THE WITNESS: My understanding is it was Dr. Kunz's sole -- well, I can't remember any of the other. But I -- it is a NeoRx invention. It's Dr. Kunz's observation and invention.

BY MR. MAS:

Q. Okay. My question was, is it your belief that Dr. Anderson had no inventive contribution to the Biostenting?

A. Yes.

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Q. Do you understand that Dr. Anderson believes he is a co-inventor on the 009 patent?

MR. JOHNSON: Objection, form.

THE WITNESS: I would -- yes.

BY MR. MAS:

Q. Now, when you mention this Biostenting effect, does that mean that the drug by itself through its anticontractile and antimigration mechanisms keep the lumen open?

MR. JOHNSON: Objection, vague.

THE WITNESS: That's my understanding.

BY MR. MAS:

Q. Now, let me have you look at claim 14. Who do you believe were the inventors on claim 14 of the 009 patent?

MR. JOHNSON: Objection to form, calls for a legal conclusion.

THE WITNESS: I believe Dr. Kunz had inventive contribution. To the extent I can recall, Dr. Kunz.

BY MR. MAS:

Q. You're aware from the early documents between Dr. Kunz and Dr. Anderson that Dr. Anderson also contributed to the aspect of using a binding protein or peptide capable of binding to vascular smooth muscle cells; correct?

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MR. AL-SALAM: Objection, mischaracterizes the evidence.
THE WITNESS: I'm not sure that's correct.
BY MR. MAS:
Q. Okay. Do you believe that Dr. Anderson is a co-inventor on claim 14 of the 009 patent?
MR. JOHNSON: Objection to form.
THE WITNESS: I would be relying on -- on my outside counsel's analysis. Can I answer that?
MR. AL-SALAM: You can answer yes or no.
THE WITNESS: I don't believe he is an inventor on that.
BY MR. MAS:
Q. Okay. Let me have you turn back to Anderson -- Kunz Exhibit 6.
A. Yes.
Q. Okay. Actually, take a look at claim 5 on the 009 patent. Do you see that?
A. Yes.
Q. Okay. And this is a dependent claim from claim 1 or 2?
A. Yes.
Q. And it states that, "The method of claim 1 or 2 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof."

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Do you see that?
A. Yes.
Q. Okay. Now, if you turn to Kunz Exhibit 6. And this was the December 18th, 1990 letter from Dr. Anderson to Dr. Kunz?
A. Yes.
Q. Do you see that?
A. Yes.
Q. And do you see on the third page of this exhibit, which is part of the write-up prepared by Dr. Anderson. Do you have that before you?
A. Yes.
Q. Okay. Now, at the top of the third page first full sentence Dr. Anderson states,
"Other cytotoxic substances that will either kill smooth muscle cells, toxins, or prevent cell division, Colchisine, methotrexate, adriamycin, et cetera, could also prevent restenosis if delivered to the PTCA site."
Do you see that?
A. Yes.
Q. Now, Colchisine is a cytoskeletal inhibitor; correct?
MR. AL-SALAM: Objection, lack of foundation.
THE WITNESS: I don't recall specifically. I'd have to look through the --
BY MR. MAS:
Q. Okay. Well, let me have you then look to the patent. You can look to -- and I'll refer you to -- since you have the 009 patent, I'll find the cite for you. Column 17.
Do you have that?
A. Column again, 17?
Q. Column 17.
A. Yes.
Q. Okay. And if you look at line 21 it states, quote, "Representative examples of cytoskeletal inhibitors include Colchisine, Vinblastin, cytochalasins, et cetera."
Do you see that?
A. I see, yes.
Q. So according to the 009 patent Colchisine is a cytoskeletal inhibitor; correct?
A. It characterizes it, yes.
Q. And in fact, if you turn to -- to column 16 of the 009 patent. And at lines 47 there's a list of cytostatic agents.
Do you see that?
A. Yes.
Q. And that also includes adriamycin?
A. Yes.

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Q. That's another agent that Dr. Anderson mentions in his write-up in Kunz Exhibit 6?
MR. AL-SALAM: Objection, lack of foundation.
MR. JOHNSON: Lack of foundation, mischaracterization of the document.
MR. AL-SALAM: Right.
THE WITNESS: Is this a joint -- it says it's a Peter Anderson and Larry Kunz write-up.
BY MR. MAS:
Q. Yes. Do you see that?
A. Yes.
Q. And then he also mentions methotrexate in the write-up included with Kunz Exhibit 6. And that's another cytostatic agent identified in column 16?
MR. AL-SALAM: Who's he?
MR. MAS: Dr. Anderson.
MR. AL-SALAM: I want to make that clear. You're saying that he wrote that?
MR. MAS: Yes.
MR. JOHNSON: Objection, the author's --
MR. MAS: I think the evidence is very clear on that.
MR. JOHNSON: Objection, mischaracterization of the evidence. It clearly lists both of them as authors.
BY MR. MAS:

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Foundation join in its request; correct?
MR. AL-SALAM: Object to the form of the question.
THE WITNESS: Yes.
BY MR. MAS:
Q. Okay. I think you can put that application aside for a bit. Maybe put it on the chair.
A. I thought there was a rubber band.
Q. You don't need -- okay. You can put the rubber band on. It's fine. And I would like you to relocate Wight Exhibit 9, which was the PCT file history. I believe that's in the stack next to you.
MR. JOHNSON: You said Wight 9, the PCT?
MR. MAS: Yes, Wight 9.
THE WITNESS: Oh, there it is.
BY MR. MAS:
Q. Now, I would like you to turn in the PCT file history to Bates numbers BSX 404593.
MR. JOHNSON: What page? I'm sorry. I have the wrong exhibit. What number did you say?
MR. MAS: Wight Exhibit 9, which is the PCT file history.
MR. JOHNSON: Right. And what was the Bates number? I'm sorry.
MR. AL-SALAM: You don't have that exhibit.

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This is -- say it again.
MR. MAS: Okay. Wight Exhibit 9. Why don't we turn to BSX 404591.
MR. JOHNSON: At least I feel a little bit less like I'm going crazy.
BY MR. MAS:
Q. Do you have that page?
A. I do.
Q. And this is a PCT request; correct?
A. Yes.
Q. And the applicant and address listed at the top is NeoRx Corporation. Do you see that?
A. Yes.
Q. And the further applicants and further inventors are listed as Larry or Lawrence Leroy Kunz?
A. Yes.
Q. Now, if you turn to BSX 404593, which is two pages later.
A. Yes.
Q. You see there's a signature by Michael Levine?
A. Yes.
Q. And that's a signature on behalf of applicant?
A. Yes.
Q. Okay. Now, in the middle of the page there is a request for priority to U.S. application number 07 slash

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767254. Do you see that?
A. Yes.
Q. And the priority request is requested for September 27, 1991, which was the filing date of the 254 application; correct?
A. Yes.
Q. Okay. Now I would like you to turn to BSX 404589.
A. Yes.
Q. Do you have that before you?
A. Yes.
Q. And this is a request for withdrawal of priority claim in the PCT file; correct?
A. Yes.
Q. And referring you to the -- the first paragraph, it states, quote,
"Applicant respectfully requested in connection with the above-identified international application the claim for priority based on U.S. patent application number 07 slash 767254 filed 27 September 1991 be withdrawn under rule 90.3."
You see that?
A. Yes.
Q. And then it states, "Therefore, publication of the international application under article 21 2A should

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not occur until March 1994."
Do you see that?
A. I do.
Q. So in this document NeoRx is requesting that the prior priority claim to the 254 application be withdrawn; correct?
A. Yes.
Q. And by doing that NeoRx is able to postpone the publication date of the PCT application until March of 1994; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: That's the result of this, yes.
BY MR. MAS:
Q. Okay. If -- if NeoRx had kept the priority claim to September of 1991, the application would be published much earlier; correct?
MR. JOHNSON: Objection, vague.
THE WITNESS: I don't remember my PCT rules, but I think so.
BY MR. MAS:
Q. Okay. So by withdrawing the priority claim, NeoRx is able to keep the application secret for a longer period of time; correct?
MR. JOHNSON: Objection to form, mischaracterization.

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with Boston Scientific on that subject.
A. In the late '90s.
Q. Okay. Now, were those -- were those discussions successful?
A. No.
Q. Okay. Now, in September of 2002 were a second round of discussions begun with Boston Scientific?
A. Yes.
Q. Okay. And were you involved in those discussions?
A. From time to time.
Q. Let's have the court reporter mark Exhibit 13, which is a one-page document bearing Bates numbers 411258.
(Whereupon, a letter to Anna Lewak Wight from Jana Brusacoram dated September 8, 1998 was marked as Exhibit-13 for identification.)
Can you identify Exhibit 13?
A. It's a letter from outside counsel about an issuance.
Q. And this letter is dated September 8th, 1998; correct?
A. Yes.
Q. And it's addressed to you?
A. Yes.
Q. And it informs you of the issuance of U.S.

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patent 5,811,447?
A. Yes.
Q. It states that it will issue on September 22nd, 1998?
A. Yes.
Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14.
(Whereupon, Anderson Exhibit-14 was placed before the witness.)
A. Yes.
Q. Okay. You were involved with the prosecution of the 447 patent; correct?
A. To the extent I was involved in the prosecution, most of it is done by outside counsel.
Q. You directed outside counsel with regard to the prosecution of the 447 patent; correct?
MR. JOHNSON: Objection, vague.
THE WITNESS: Yes.
BY MR. MAS:
Q. Now, was the 447 patent part of NeoRx's cardiovascular portfolio?
A. Yes.
Q. Let me have the court reporter mark as Wight Exhibit 14 a document bearing Bates numbers NeoRx 41568 through 41591.

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(Whereupon, a facsimile to Jan Embretson from Anna Lewak Wight dated January 10, 2003 was marked as Exhibit-14 for identification.)
A. Yes.
Q. Do you recognize this document?
A. Yes.
Q. Is this a letter from you to Jan Embretson dated January 10th, 2003?
A. Yes.
Q. And Jan Embretson is the attorney responsible for the prosecution of the Kunz and Grainger patents?
A. Yes.
Q. And this letter attaches the UAB license and option agreements; correct?
A. Yes.
Q. Okay. And that's the 1991 agreement between NeoRx and UAB and the 1993 agreement between NeoRx and UAB?
A. Yes.
Q. Okay. I'd like to have the court reporter mark as Wight Exhibit 15 a document bearing Bates numbers NeoRx 28488 through 28500.
(Whereupon, a facsimile to Jan Embretson from Anna Lewak Wight dated January 16, 2003 was marked as Exhibit-15 for identification.)

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Do you recognize this document?
A. Yes.
Q. Is this a letter from you to Jan Embretson dated January 16th, 2003?
A. Yes.
Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation?
A. Yes.
Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx?
A. Yes.
Q. And then there is a series of other assignment-related documents attached to the letter?
A. Yes.
Q. Correct?
A. Yes.
Q. Let me have the court reporter mark as Wight Exhibit 16 a document bearing Bates numbers NeoRx 55884 through 55 -- actually, the document is a six-page document, each page which is Bates numbered NeoRx 55884.
(Whereupon, a fax transmission to Dr. Peter Anderson from Janet Embretson dated January 30, 2003 was marked as Exhibit-16 for identification.)
Do you recognize Wight Exhibit 16?

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A. Yes.
Q. And what is it?
A. It's a letter from Jan Embretson to Dr. Anderson.
Q. It's dated January 30th, 2003?
A. Yes.
Q. And what does the letter concern?
A. It asks him --
MR. JOHNSON: Objection, lack of foundation. You can go ahead.
THE WITNESS: It's a letter indicates that she spoke with him, enclosed documents for changing inventorship and claims in the European patent application.
BY MR. MAS:
Q. Now, this letter to Dr. Anderson is requesting that Dr. Anderson agree to be removed as an inventor on the 447 patent; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes.
BY MR. MAS:
Q. Okay. Now, at the time you wrote this letter -- and by you, I mean NeoRx -- wrote this letter to Dr. Anderson, NeoRx was in discussions with Boston Scientific concerning the cardiovascular portfolio;

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correct?
MR. JOHNSON: Objection to form, lack of foundation.
THE WITNESS: Yes, I think we were in discussions. I don't know --
BY MR. MAS:
Q. Well, I think --
A. Yes, it says that we sent the portfolio.
Q. Yes, in September of 2002; correct?
A. Right.
Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct?
MR. JOHNSON: Objection to form, calls for a legal conclusion.
THE WITNESS: If he remained on the patent? I'm trying to recall the chain for these assignments.
BY MR. MAS:
Q. Well, do you see on the face of the 447 patent --
A. Uh-huh.
Q. -- Dr. Anderson is listed as one of the inventors?
A. Yes.
Q. And if he remained as a co-inventor on the 447

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patent, then NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct?
MR. AL-SALAM: Objection.
MR. JOHNSON: Objection to form, calls for a legal conclusion.
THE WITNESS: I believe if he was appropriately named.
BY MR. MAS:
Q. If Dr. Anderson was a co-inventor on the 447 patent, then the University of Alabama Research Foundation would have rights to the patent, also; correct?
MR. JOHNSON: Objection to form, calls for a legal conclusion.
THE WITNESS: If he was a co-inventor, yes.
BY MR. MAS:
Q. Okay. Now, he was named on the 447 patent; correct?
A. Yes, originally.
Q. Okay.
A. But so were a whole slew of inventors who don't belong there.
Q. Now, in January of 2003 when you asked Dr. Anderson --
A. Uh-huh.

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Q. -- to be taken off the patent, what did he say?
MR. AL-SALAM: Objection, lack of foundation. Did you say what she asked him?
BY MR. MAS:
Q. No. When Dr. Anderson was asked to agree to be taken off the 447 patent, what was his response?
MR. AL-SALAM: Lack of foundation.
MR. JOHNSON: Objection to form.
THE WITNESS: He didn't respond to me.
BY MR. MAS:
Q. Okay.
A. Specifically.
Q. Who did he respond to?
MR. JOHNSON: Objection to form.
THE WITNESS: I believe he responded to Miss Embretson.
BY MR. MAS:
Q. Okay. And what was his response?
A. He refused the sign the document.
Q. Okay. Now, so he refused to be taken off of the 447 patent as a co-inventor; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: He wouldn't sign the document; correct.
BY MR. MAS:

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Q. Now, why was all this done five years after the 447 patent had issued?
MR. JOHNSON: Objection, calls for speculation, form.
THE WITNESS: In preparation for licensing or sale of the portfolios we looked at a number of things in preparing the files for diligence and noted that in a number of instances, and this case was one of them, there was improper inventorship which had carried forward from earlier applications. For example, in this case there were seven inventors that most of which did not belong on this case.
BY MR. MAS:
Q. Now, Dr. Anderson didn't believe he was an improper inventor on the 447 patent; correct?
MR. AL-SALAM: Objection, lack of foundation, calls for speculation.
MR. JOHNSON: Objection to form.
THE WITNESS: I can't tell you what Dr. Anderson said. I can tell you that he had not signed the petition.
BY MR. MAS:
Q. Now, the reason that NeoRx was seeking to remove Dr. Anderson from the 447 patent was because it was preparing to sell these patents to Boston Scientific; correct?

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MR. JOHNSON: Objection, mischaracterization.
THE WITNESS: We were attempting to correct improper inventorship on certain of the patents where it had been mistakenly carried forward from an earlier case such as this case.
BY MR. MAS:
Q. Okay. NeoRx had been attempting to license or assign its cardiovascular portfolio for years before it finally struck a deal with Boston; correct?
MR. JOHNSON: Objection, mischaracterization.
THE WITNESS: We did sell them in 2003 to Boston.
BY MR. MAS:
Q. Okay. And it had been trying to license or assign its cardiovascular portfolio for many years prior to that to various companies; correct?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes.
BY MR. MAS:
Q. And at no time prior to January of 2003 did Boston try to remove Dr. Anderson from the 447 patent?
MR. JOHNSON: Objection. Can you just look at that question? You said Boston.
BY MR. MAS:
Q. I misspoke. I apologize. Thank you, Counsel.

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A. I'm sorry.
Q. At no time prior to January of 2003 did NeoRx attempt to remove Dr. Anderson from the 447 patent; correct?
A. I don't know. I know there were petitions filed in several of the cases prior to this time. I don't know if it was in this case.
Q. Okay. But to your knowledge, the patent office had not removed Dr. Anderson from the 447 patent previously; right?
A. As far as I know, no.
Q. Let me hand you a copy of what's been previously been marked as Anderson Exhibit 13.
(Whereupon, Anderson Exhibit-13 was placed before the witness.)
Do you recognize Anderson Exhibit 13?
A. It's the response from Dr. Anderson to Jan Embretson.
Q. Okay. Were you provided a copy of this previous to this deposition?
A. No.
Q. Miss Embretson did not send you a copy of this response?
A. You mean not in preparation, no. Yes, I believe she sent me copy.

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Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct involvement and scientific expertise."
Do you see that?
A. Yes.
Q. And he's referring to the four claims of the 447 patent?
MR. JOHNSON: Objection, lack of foundation.
BY MR. MAS:
Q. Do you see that?
A. Yes, I see what he says.
Q. And he then marks up various claims with certain contributions that he had to the various claims in the 447 patent?
MR. JOHNSON: Objection, mischaracterization, lack of foundation.
BY MR. MAS:
Q. Do you see that?
A. Yes. I'm sorry. I see where he marked it.
Q. Okay. Did NeoRx reassess whether Dr. Anderson should be a co-inventor on the 447 patent after receiving this?
A. Yes.

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Q. And what has it decided?
A. Dr. Anderson is not an inventor on this application. Yes, he is not.
Q. Okay. BS -- Boston Scientific expressed a concern regarding the inventorship of the 447 patent to NeoRx; correct?
MR. JOHNSON: Objection to form, foundation.
THE WITNESS: Of the 447?
BY MR. MAS:
Q. Yes.
A. Actually, I'm not sure that they specifically were concerned about this. I'm not sure.
Q. Let me hand you a copy of an exhibit I'll mark as Wight Exhibit 17.
(Whereupon, an e-mail from James Lisbakken to Scott Talbot sent March 26, 2003 was marked as Exhibit-17 for identification.)
Do you have that document in front of you?
A. Uh-huh.
Q. And do you see the e-mail at the top of this page?
A. Uh-huh.
Q. And it's from Jim Lisbakken to Scott Talbot?
A. Uh-huh.
Q. On March 26th, 2003?

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A. Yes.
Q. And you're copied on this e-mail?
A. Yes.
Q. And the e-mail is from Jim Lisbakken to Scott Bluni at Boston Scientific; correct?
A. Yes.
MR. JOHNSON: Objection, mischaracterization.
BY MR. MAS:
Q. Actually, Scott Talbot?
A. Yeah. I'm sorry; correct.
Q. And do you see it says, Scott, "I understand that NeoRx's outside patent counsel has forwarded to you the inventorship change information regarding the 447 case"?
A. Uh-huh, yes.
Q. Who's Scott Talbot?
A. He was I believe counsel for Boston Scientific.
Q. Okay. And then there's -- then it reads,
"Outside patent counsel tells me the following with respect to your questions regarding the two applications. A, the 447 patent issued out of the 793 application that you cited, and then B, the 451 application is the abandoned parent of the 793 application."
A. Uh-huh.

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Q. And then he states, "I believe this should address your questions regarding inventorship."
A. Yes.
Q. Do you see that?
A. Uh-huh.
Q. So Boston was concerned about the inventorship on the 447 patent?
MR. AL-SALAM: Objection, lack of foundation.
THE WITNESS: I'm not sure I know. He obviously answered a question about it, but --
BY MR. MAS:
Q. And then at the bottom of the page is the e-mail from Scott Talbot at Boston to Jim Lisbakken. Do you see that?
A. Yes.
Q. And again, this e-mail regards the 451 and 793 applications and U.S. patent 5,811,447. You see that?
A. Uh-huh.
Q. And Scott Talbot states to Jim Lisbakken, quote, "Can you please confirm that all three of these are omitted because inventorship was corrected to exclude any Cambridge inventors and provide documentation of that change."
Do you see that?
A. Yes.

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Q. And so Scott is again inquiring as to the inventorship of the 447 patent?
MR. JOHNSON: Objection to form.
THE WITNESS: Okay.
MR. JOHNSON: Lack of foundation.
THE WITNESS: Yes.
BY MR. MAS:
Q. So as of January 30th, 2003, Dr. Anderson would not agree to be removed as a co-inventor on the 447 patent; correct?
A. Yes.
Q. Now, in April of 2003 NeoRx entered an agreement with Boston Scientific relating to its cardiovascular portfolio; correct?
A. Correct.
Q. And in that agreement NeoRx assigned to Boston Scientific the Kunz chain of patents; correct?
A. Yes.
Q. Okay. Now, did NeoRx ever inform the University of Alabama Research Foundation that it was assigning to Boston Scientific a patent on which Dr. Anderson was named as a co-inventor?
A. Not to my knowledge.
Q. Okay. Yet in the agreement that NeoRx reached with Boston Scientific it did, in fact, assign the 447

NEORX

NeoRx Corporation
410 West Harrison
Seattle, WA 98119-4007
206-281-7001
Fax 206-284-7112

February 19, 1993

Ms. Lucy Hicks
The UAB Research Foundation
113 Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010

Re: Patent Applications - "Therapeutic Inhibitor of Vascular Smooth Muscle Cells"

Dear Ms. Hicks:

Pursuant to our discussion earlier today, enclosed please find the following documents:

* Parent application USSN 767,254, filed September 27, 1991 (Kunz and Anderson)

* CIP filed as PCT, designating US, filed September 25, 1992 (Kunz)

* US CIP of CIP, filed January 28, 1993 (Kunz and Klein)

I understand that the second and third documents will be treated as NeoRx Confidential Information, and that, upon completion of this inventorship analysis, these documents will be retained in your Legal Department or destroyed. The first document (joint invention) is provided for your reference and files.

Please contact me if I can help distill these inches of paper to a manageable form. My direct number is (206) 286-2525, if either you or Dr. Anderson has any questions.

Very truly yours,

Debra K. Leith

Debra K. Leith, J.D., Ph.D.
Director, Intellectual Property

cc: R. Schroff
L. Kunz

NeoRx 100017

HIGHLY CONFIDENTIAL
ATTORNEYS' EYES ONLY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOSTON SCIENTIFIC SCIMED, INC.;
and BOSTON SCIENTIFIC CORPORATION,
Plaintiff,
vs. Case No. 03-283-SLR
CORDIS CORPORATION; and JOHNSON & JOHNSON,
INC.,
Defendants.

BOSTON SCIENTIFIC SCIMED, INC.;
and BOSTON SCIENTIFIC CORPORATION,
Plaintiff,
vs. Case No. 03-1138-SLR
CORDIS CORPORATION; JOHNSON & JOHNSON,
INC.; GUIDANT CORPORATION; GUIDANT
SALES CORPORATION; and ADVANCED
CARDIOVASCULAR SYSTEMS, INC.,
Defendants.

VOLUME II
DEPOSITION OF ROBERT W. SCHROFF, Ph.D.
Taken on behalf of the Plaintiffs
December 30, 2004

you were differentiating with respect to the actual research collaboration, do you understand that that collaboration was limited to conjugates of monoclonal antibodies with toxic agents?

MR. MELORO: Objection; vague and ambiguous. Also, lack of foundation.

THE WITNESS: I still don't understand the question, whether you want to know whether the collaboration was limited in the sense that that's all they worked on or whether it was limited in the sense that that's all they were allowed to work on.

What are you asking me?

BY MS. McNICHOLAS:

Q. Let me try again.

What did the collaboration between Dr. Anderson and the University of Alabama and Dr. Kunz at NeoRX involve?

MR. MELORO: Objection. Vague and ambiguous; lack of foundation.

THE WITNESS: In general, it involved ways to treat restenosis. The specifics of what all they investigated or contemplated investigating, I don't remember.

MS. McNICHOLAS: Thank you.

I'd like to mark now as Schroff Exhibit 60

a document with Bates No. NeoRX 100017.

(Whereupon, a 1-page letter to Lucy Hicks from Debra Leith dated 2/19/93 was marked Exhibit-60 for identification.)

BY MS. McNICHOLAS:

Q. Dr. Schroff, can you identify Exhibit 60?

A. (Witness peruses document.)

It's a letter from Debra Leith to Lucy Hicks at the University of Alabama.

Q. And do you see that you were copied on this letter?

A. I see that.

Q. Referring to the first paragraph of the letter, there are three documents referenced, three patent applications.

Do you see that?

A. Mm-hm.

Q. Do you recall these three applications?

A. No.

Q. Do you recall working with Dr. Leith to help prepare applications relating to the work of Dr. Anderson and Dr. Kunz?

A. Working with her.

I doubt I drafted any of those applications, if that's what you're asking.

Q. Could you tell me generally what the procedure was for filing a new application at NeoRX at the time of this letter in 1993?

MR. MELORO: Objection; lack of foundation that there was a procedure.

THE WITNESS: No, I couldn't define to you a procedure that would have necessarily been followed.

BY MS. McNICHOLAS:

Q. Was there any kind of process or guidelines that the company put forward in order to protect new intellectual property coming out of the research group?

MR. MELORO: Objection; vague and ambiguous.

THE WITNESS: Were there guidelines.

There probably were. I don't remember what they might have been at that time.

BY MS. McNICHOLAS:

Q. Do you recall whether there was a patent committee at the time of this letter in 1993 at NeoRX?

A. There was a patent committee at different times. Whether -- in what form it existed at this particular time, I don't know.

Q. And Dr. Leith, who signed this letter as director of intellectual property, she was the in-house patent counsel at NeoRX at this time?

A. She was one of them. I don't believe she was

the only one.

MS. McNICHOLAS: Okay. I'd like to mark as Schroff Exhibit 61 a document bearing Bates No. NeoRX 29306.

(Whereupon, 1 page of hand-written notes was marked Exhibit-61 for identification.)

BY MS. McNICHOLAS:

Q. Dr. Schroff, do you recognize the handwriting on this document, Exhibit 61?

A. (Witness peruses document.)

It looks like mine.

Q. And do you see the date of the document as February 9th, 1993 in the upper right corner?

A. Mm-hm.

Q. And then do you see the names that are listed at the head of various sections of the document? One, I think, says "Pete."

A. Mm-hm.

Q. Does that refer to Pete Anderson?

A. I presume it does.

Q. And then do you see the second bullet that I think says, "What does Pete want on an agreement? Go through UAB, name back on patent"? Do you see that?

MR. MELORO: Objection.

THE WITNESS: Mm-hm.

BY MS. McNICHOLAS:
Q. Do you recall discussions that you had with Dr. Kunz related to the interest that Dr. Anderson had with respect to the agreement?
A. Do I -- ask me the question again.
Q. Let me just restate it.
Do you recall any discussions with Dr. Kunz or other -- others at NeoRX related to the agreement that Pete wants, according to these notes here?
A. No, I don't remember any specific discussions.
Q. Okay. The next section says "Roozen."
Do you see that?
A. Mm-hm.
Q. Do you know who Roozen is?
A. My vague recollection is he has something to do with UAB.
Q. And do you see the second bullet that says, "Current patent status, new agreement design"?
A. Mm-hm.
Q. Does this refer to the agreement that we just looked at, Exhibit 59, between the University of Alabama at Birmingham and NeoRX?
A. I can't be sure.
Q. And then the last section says, I believe,

"Roubin"?
A. Mm-hm.
Q. Who is Dr. -- who is Roubin?
A. Gary Roubin's a clinical -- an interventional cardiologist at UAB, or was at that time.
Q. And is this the Dr. Roubin that you testified to yesterday --
A. Mm-hm.
Q. -- as working with Dr. Anderson at University of Alabama?
A. They were generally --
Q. -- at Birmingham?
A. They were in a similar group. They were not in the same department.
Q. Do you know if the notes on this Exhibit 61 refer in any way to the patents that were in the previous exhibit that Dr. Leith referenced, the patent applications referenced?
A. Do I know whether these notes have to do with those three patent applications?
Q. Yes.
A. No.
Q. Thank you.
A. I'm not sure exactly what these relate to.
Q. Thank you.

MR. MELORO: We've been going about an hour. Do you want to take a break?
MS. McNICHOLAS: Sure.
THE VIDEOGRAPHER: The time is 12:03 p.m. Going off the record.
(Pause in the proceedings.)
THE VIDEOGRAPHER: Back on the record. The time is 12:15 p.m.
MS. McNICHOLAS: I'd like to mark as Schroff Exhibit 62 a document bearing Bates Nos. NeoRX 100020 through -22.
(Whereupon, a 3-page fax to Debra Leith from Lucy Hicks dated 4/15/93 was marked Exhibit-62 for identification.)
BY MS. McNICHOLAS:
Q. Dr. Schroff, could you identify Exhibit 62?
A. (Witness peruses document.)
It appears to be a fax from Lucy Hicks to Deb Leith.
Q. Do you recall having any discussions with Dr. Leith regarding the inventorship of the patent applications that are referenced in this letter dated April 15th, 1993?
MR. AL-SALAM: I caution the witness that that's a "yes" or "no" question --

THE WITNESS: Yes.
MR. AL-SALAM: -- and not to reveal the substance of any attorney-client communications.
BY MS. McNICHOLAS:
Q. Referring to the second paragraph of the first page of the document and the last sentence: "Dr. Anderson, in subsequent conversations with Dr. Kunz, discussed and disclosed the use of microencapsulation and methods of controlled release of therapeutic agents to control restenosis in the vascular wall."
Did you have conversations with Dr. Anderson and Dr. Kunz regarding microencapsulation and methods of controlled release of therapeutic agents to control restenosis?
MR. MELORO: Objection to the form of the question.
THE WITNESS: You mean with both of them together or with either one of them, or what are you asking?
BY MS. McNICHOLAS:
Q. With either or both.
A. Yes.
Q. And do you recall whether the conversations involved the previous work of Dr. Anderson in the area of microencapsulation and methods of controlled release?

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MR. MELORO: Objection --
THE WITNESS: No.
BY MS. McNICHOLAS:
Q. Did Dr. Kunz have experience in the use of microencapsulation and methods of controlled release of therapeutic agents?
MR. MELORO: At what time?
BY MS. McNICHOLAS:
Q. At the time of this document, April of 1993, as you recall?
A. I can't recall when he started working in that area and developing expertise.
Q. Dr. Schroff, could we return to a previously marked Exhibit 45?
A. I can try. (Witness complies.)
Q. I'd like to ask you a few additional questions about this exhibit which bears document Bates Nos. NeoRX 100023 through -25.
A. (Witness peruses document.)
Q. You've already testified to some questions related to the first paragraph of this letter about various discussions.
Turning to the second paragraph and the last -- the second sentence of that paragraph, "We are no longer pursuing an immunoconjugate approach."

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Do you see that?
A. I see that.
Q. Why were you no longer pursuing an immunoconjugate approach?
A. At some point in the project, we decided that an immunoconjugate approach was not giving us the results we wanted, and we moved to other portions or other aspects of the research.
Q. And what were the results that you wanted?
A. We wanted to see an inhibition of restenosis.
Q. And the immunoconjugates that you had tested at that time did not give the inhibition of restenosis; is that correct?
A. Not in and of themselves, no.
Q. When you stopped pursuing the immunoconjugate approach, did you continue with therapeutic agents that were free or unconjugated?
A. Unconjugated to monoclonal antibodies, you mean?
Q. Unconjugated to monoclonal antibodies or other moieties.
MR. MELORO: Objection to form.
THE WITNESS: At some point we ceased working with agents conjugated to monoclonal antibodies. "Conjugation" as it means a coupling of things, yes, they

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were conjugated to other things during the time of the project.
BY MS. McNICHOLAS:
Q. And what other things were the therapeutic agents conjugated to?
MR. MELORO: At any time?
BY MS. McNICHOLAS:
Q. During the project.
A. At any time, things that come to mind would include sustained-release formulations, stent materials, things of that nature.
Q. The last -- second-to-the-last sentence of the second paragraph says, "The patent family has become quite complex, involving a number of different technical approaches and potential product formulations."
What were the different technical approaches?
A. I couldn't recite all the technical approaches.
Q. Do you recall any of the various technical approaches?
A. I recall generalities such as cytostatic versus cytotoxic agents and various -- I remember we did various subsetting of cytostatic agents. What those subsets were, I couldn't recite.

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Q. And what were the potential product formulations; any that you recall?
A. I'm not sure exactly what I meant in that document. I probably meant something like sustained-release delivery versus nonsustained-release and some sort of a solid phase, like a stent or otherwise, versus non. I don't remember the -- I couldn't list you the formulations.
Q. And then the last sentence of that paragraph, "The most recent patent application also involves additional non NeoRx inventors, further complicating the picture."
Who are the additional non NeoRx inventors that you're referring to?
A. I couldn't tell you with certainty.
Q. Would they be the Cambridge Group, Drs. Grainger and Metcalfe?
A. Certainly a possibility.
Q. Moving on to the third paragraph. In the first sentence, you state "What I would like to do at this time is to propose a modification to our original agreement."
Do you -- did you negotiate a modified agreement with the University of Alabama at Birmingham?
A. I believe I did. I don't really remember the

specifics.
Q. In the last sentence of that paragraph. vou refer to licenses that you've taken on, "licenses on additional technologies beyond our license with UAB," and this is stated to necessitate proposed modifications to the agreement.
Do you recall the licenses that you're referring to?
A. Not specifically.
Q. Would one of the licenses be with the Cambridge Group?
A. Probably not, because that wasn't a license.
Q. Had you obtained licenses to, for example, patents related to formulations such as sustained-release?
MR. MELORO: Objection to form.
THE WITNESS: We may have at that time.
BY MS. McNICHOLAS:
Q. But you don't recall the specifics of the licenses that you might be referring to here?
A. It could have involved the March patent if we had that license at that time. It could have involved things like Southern Research Institute if we had a license at that time with them. I don't recall.
Q. And why would the additional licenses necessitate the proposed modifications?

A. I believe the argument that I was making was that there was a limit to how many different groups could receive royalties or high royalties and still have anything left to warrant us spending money to develop the products.
Q. Turning to the second page of the Exhibit 45, it's in the second paragraph. And in the middle of that second paragraph, "In addition," the sentence says, "the current agreement covers only conjugates."
Are you referring to the agreement that we discussed as Exhibit 59?
MR. MELORO: You should take a look at 59 if she's going to ask.
THE WITNESS: (Witness complies.)
It would appear that that's what I was referencing, yes.
BY MS. McNICHOLAS:
Q. And do you recall that I asked you a question when we were discussing Exhibit 59 as to whether the agreement covered -- was limited to conjugates? Does this statement in Exhibit 45 indicate that the agreement, at least in your view as stated here, did only cover conjugates?
A. Does it appear from what I wrote here that that's what I believed at the time?

Q. Yes.
A. It appears that way.
Q. The next sentence says, "The definition is too constrained, as we are no longer investigating conjugates as described in the original patent application and the NeoRX UAB agreement."
And again, that reference is to the agreement that we have marked as Exhibit 59; is that correct?
A. It appears to be.
Q. And was your view at the time of writing this that the original patent application that you're referring to here was describing conjugates?
MR. MELORO: Can you read back that question, please?
(Whereupon, the previous question was read back by the court reporter, as requested.)
BY MS. McNICHOLAS:
Q. Is that correct?
A. It would appear from looking at this that that's correct.
Q. And the next sentence states, "I would propose that the scope of our agreement be modified to include any products covered by an allowed claim in a patent naming Pete Anderson or any other UAB investigator

as an inventor."
Was the agreement modified to include the products covered, as you proposed?
A. I don't remember what we did.
Q. Do you recall who was involved in the negotiation of the revised or modified agreement?
A. It's obvious from looking at these notes that I was involved. Who else was involved other than myself, Roozen and probably Hicks. I don't remember.
Q. The date of this letter is June 14th, 1993, and you've signed the letter with the title "vice president and general manager of cardiovascular products."
There was -- was there a time in 1993 that your position changed, to take on the title of vice president and general manager of cardiovascular products?
A. As we discussed before, there was a time in which my title changed. I don't remember specifically when that title change was. From that document we were looking at, it would certainly indicate the -- that patent document would indicate that that's probably when we changed the title.
MS. McNICHOLAS: I'd like to mark as Schroff Exhibit 63 a document bearing Bates Nos. NeoRX 100026 through -37.
(Whereupon, a 12-page Agreement was marked

Exhibit-63 for identification.)
BY MS. McNICHOLAS:
Q. Dr. Schroff, can you identify Exhibit 63?
A. (Witness peruses document.)
It appears to be an agreement between NeoRX and the University of Alabama.
Q. Is this the modified University of Alabama agreement referred to in Exhibit 45 that we just discussed?
MR. MELORO: Objection to the characterization, "modified."
THE WITNESS: So on Exhibit 45, we were proposing modifications. You want to know if this was the result of that proposal?
BY MS. McNICHOLAS:
Q. Yes. Thank you.
A. It certainly looks like it could be. I couldn't tell you specifically.
Q. Well, for example, in Exhibit 45, we discussed your proposal that the definition was constrained to cover conjugates. Has this agreement been modified to reflect that -- a change and expansion of the definition of what the agreement covered?
MR. MELORO: Objection to form.
THE WITNESS: The only way I can answer that is

to go through that pile and get the old agreement and look at them next to each other and see if the language has been modified.
I couldn't -- I don't have any a priori recollection of what's in this document.
BY MS. McNICHOLAS:
Q. You don't have a recollection that the modifications that you proposed are reflected in the modified agreement?
MR. MELORO: Objection; asked and answered.
THE WITNESS: I can see that there were a number of things that were being discussed. Which of those were included in the agreement when signed, I couldn't tell you without going through and searching through the document.
MS. McNICHOLAS: Okay. I would like to mark as Schroff Exhibit 64 US Patent No. 6,515,009.
(Whereupon, a 61-page United States Patent No. 6,515,009 was marked Exhibit-64 for identification.)
BY MS. McNICHOLAS:
Q. Dr. Schroff, are you familiar with this patent 6,515,009?
A. (Witness peruses document.)
Not specifically, no.
Q. I'm going to refer to it in our discussions as the 009 patent.

Are you aware that this is one of the patents that's involved in the litigation?
A. Not specifically.
Q. Could you turn to the first column of the patent, about a third of the way down -- I mean the first page of the patent, sorry, about a third of the way down in a section entitled "Related US application data."
Do you see that paragraph?
A. Yes.
Q. And starting at the bottom of that paragraph, it refers to an application that was filed on September 27th, 1991. And then continuing through that paragraph, there are a series of applications that have been identified in 1992, in 1993, and 1995.
Do you see those listed?
A. No. You said it starts with '91. The first one I see is May of '95.
Q. Well, we can work forwards or backwards.
A. Okay.
Q. So if we start at the top --
A. So you're talking about the end of the paragraph that says "63" in front of it?
Q. Right.
A. Okay.
Q. And can you see that the paragraph refers to

a series of applications? If we start at the top, the first one mentioned was filed in 1995; another one is filed in 1993?
A. Mm-hm.
Q. A third is filed at another date in 1993; then another one filed in 1992, and 1991.
A. Okay. Yes, I see that.
Q. The applications that are represented here, they were filed during a period that you were employed at NeoRX.
Do you recall the filings of any of these applications?
A. Specifically, no.
Q. Generally, do you recall any of the filings surrounding the work related to the inhibition of vascular smooth muscle cells by Dr. Kunz and others?
A. I recall that we filed several patents related to the various work that we were doing, the inhibition of vascular smooth muscle cells and other things, yes.
Q. And do you have any recollection whether you were involved in the preparation of those applications?
A. I don't remember drafting any of those applications, no.
Q. Do you remember drafting any summaries of the

research that would have been reflected in those applications?
A. I don't remember it, no.
Q. Do you recall being involved in the prosecution of these applications leading up to this 009 patent? And by "prosecution," I mean the exchange of correspondence between the United States Patent Office and NeoRX representatives related to the patent applications.
A. Yes.
Q. Did you typically review office actions that the patent office had sent for these applications?
MR. MELORO: During what time frame?
BY MS. McNICHOLAS:
Q. During the time frame that these applications were filed between 1991 and the filing of -- and the issuance of this for the time period that you were with NeoRX. I believe you said you left the second time in 1999?
MR. MELORO: I'm confused. Can you ask the question again?
MS. McNICHOLAS: Sure. I'll start again.
BY MS. McNICHOLAS:
Q. Did you -- during the period of your employment at NeoRX from 1991 until the time you left in 1999, did you review office actions that were sent by the

patent office?
A. I did not review the primary documents, no.
Q. Did you discuss with NeoRX's in-house or outside patent counsel office actions that the patent office had sent with respect to these applications?
A. Yes.
Q. Did you help NeoRX's inside and/or outside patent counsel prepare responses to those office actions?
MR. MELORO: Ever?
BY MS. McNICHOLAS:
Q. During these applications, during the period of 1991 through --
MR. MELORO: And did he ever do that, as opposed to did he do it with respect to each office action?
MS. McNICHOLAS: Right.
BY MS. McNICHOLAS:
Q. Just generally, did you work to -- with the patent counsel inside or outside to prepare responses?
A. I discussed with them responses. I don't remember physically preparing responses.
Q. Did you review drafts of responses that the inside or outside patent counsel prepared?
A. Probably.
Q. I'd like to discuss the work and experiments that are represented in the 009 patent. And I'd like to

start with the Example 1, so I'll ask you to turn to Column 36 of the patent.
A. (Witness complies.)
MR. MELORO: I take it you, at this point, are not asking Dr. Schroff to read through anything else in the patent?
MS. McNICHOLAS: No. I'm just going to ask some questions right now related to the scientific experiments and work that's represented in the examples.
MR. MELORO: Okay.
BY MS. McNICHOLAS:
Q. So at Column 36, Example 1, the title of it is "Binding to vascular smooth muscle cells in the blood vessel wall in vivo."
If you could take a look at that paragraph that references a particular antibody and just read through it.
A. (Witness complies.)
Can you point me to where I would find Figure 1?
Q. Oh, yes. Towards the beginning of the document.
A. (Witness complies.) Okay.
Q. What is this antibody NR-AN-01?
A. What is it?

Q. Mm-hm.
A. What do you mean, "what is it"?
Q. What kind of antibody is it and what is it directed to?
MR. MELORO: Which question do you want him to answer first?
BY MS. McNICHOLAS:
Q. What type of antibody; its origin?
A. Those are two different questions. What type of antibody: As it states here, it's a murine IgG2b monoclonal antibody.
Q. Okay. And what is the specificity or target of this antibody?
A. It has multiple specificities. Two that I'm aware of are human vascular smooth muscle cells and human melanoma cells, specifically at 250K dalton antigen on melanomas.
Q. Is this an antibody that was made at NeoRX?
A. "Made," meaning what?
Q. Meaning isolated, prepared.
MR. MELORO: Objection to the form of the question.
THE WITNESS: Was it isolated?
BY MS. McNICHOLAS:
Q. What is the source of this antibody? Was the

RESEARCH FOUNDATION

Date 1-6-05 Exhibit # 14
Case CARDS v. Boston Scientific
Deponent L. Kunz
Reporter TIA REIDT
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

April 15, 1993

VIA FAX

Deborah K. Leath, J.D., Ph. D.
Director, Intellectual Property
NeoRx Corporation
410 West Harrison
Seattle, Washington 98119-4007

Re: Parent Application USSN 767,254
Filed September 27, 1991
Inventors: Kunz and Anderson

CIP Filed as a PCT, designating U.S. filed September 25, 1992
Inventor: Kunz

U.S. CIP of CIP Filed January 28, 1993
Inventors: Kunz and Klein

Dear Dr. Leath:

Parent Application USSN 767,254 filed September 27, 1991, specifically covers the utilization of a therapeutic conjugate which is capable of binding to the cell surface of vascular smooth muscle cells in mammalian host resulting in inhibition of restenosis. The subsequently filed CIP's, i.e. Kunz and Klein patent applications 2 and 3 referenced above, claim the same invention as the parent application (i.e. the utilization of a therapeutic conjugate which is capable of binding to the cell surface of vascular smooth muscle cells in mammalian host resulting in inhibition of restenosis) as well as the methods of administering a sustained released dosage of a therapeutic agent.

As stated in the Preliminary Disclosure of the Invention document, as submitted by Dr. Kunz on January 16, 1991, Dr. Anderson conceived the use of the NeoRx immunoconjugates as a form of administering therapeutic agents to suppress the vascular smooth muscle proliferation as a result of angioplasty trauma. Also disclosed in this document, Dr. Kunz and Dr. Anderson discussed the use of modified perforated balloon catheters to administer or deliver the immunoconjugates developed by NeoRx to the site of the angioplasty trauma. Dr. Anderson in subsequent conversations with Dr. Kunz, discussed and disclosed the use of microencapsulation and methods of controlled release of therapeutic agents to control restenosis in the vascular wall.

NeoRx 100020

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The University of Alabama at Birmingham
113 Mortimer Jordan Hall • 1825 University Boulevard
Birmingham, Alabama 35294-2010 • (205) 934-9911 • FAX (205) 934-1221

In conclusion, Dr. Anderson in conjunction with Dr. Kunz were the persons who conceived the invention of using NeoRx antibodies either coupled directly to a therapeutic agent or bound to the time release formulation of the therapeutic agent to target the therapeutic agent to the site of vascular trauma or disease to inhibit restenosis. Dr. Anderson also contributed to the claims relating to the use of a catheter to accomplish administration of the therapeutic agent/therapeutic conjugate.

It is the opinion of the UAB Research Foundation that Dr. Anderson should be included as an inventor on the subsequent filed patent applications, patent applications 2 and 3 as referenced above. I will gladly welcome any further discussion you may have regarding the specific inventive contributions Dr. Anderson contributed to each of the claims as set forth in patent applications 2 and 3. If you have any further questions, please feel free to contact our office.

With Warmest Regards,

Lucy C. Hicks, Esq.
Program Manager II -
Patents and Licenses

LCH/sa
c: Dr. Kenneth J. Roozen
Dr. Peter Anderson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BOSTON SCIENTIFIC SCIMED, INC.;
and BOSTON SCIENTIFIC CORPORATION,

Plaintiff,

HIGHLY CONFIDENTIAL

vs. Case No. 03-283-SLR

CORDIS CORPORATION; and JOHNSON & JOHNSON, INC.,

Defendants.

(Caption continued on the following page.)

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BOSTON SCIENTIFIC SCIMED, INC.;
and BOSTON SCIENTIFIC CORPORATION,

Plaintiff,

vs. Case No. 03-1138-SLR

CORDIS CORPORATION; JOHNSON & JOHNSON, INC.; GUIDANT CORPORATION; GUIDANT SALES CORPORATION; and ADVANCED CARDIOVASCULAR SYSTEMS, INC.,

Defendants.

DEPOSITION OF LAWRENCE L. KUNZ, Ph.D., VOLUME I.
Taken on behalf of the Defendants
January 6, 2005

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of LAWRENCE L. KUNZ, Ph.D., VOLUME I, was taken before Tia B. Reidt, #2798, a Certified Shorthand Reporter, and a Notary Public for the State of Washington, on January 6, 2005, commencing at the hour of 9:41 a.m.., the proceedings being reported at Perkins Coie, 1201 Third Avenue, Suite 4800, Seattle, Washington.

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APPEARANCES

PATTERSON, BELKNAP, WEBB & TYLER, LLP
BY: MICHAEL TIMMONS
Attorney at Law
1133 Avenue of the Americas
New York, NY 10036-6710
(212) 336-2457
(212) 336-2457 Fax
Mjtimmons@pbwt.com
Appearing on behalf of Cordis and Johnson & Johnson

McANDREWS, HELD & MALLOY, LTD
BY: EDWARD MAS, II
Attorney at Law
500 West Madison Street, 34th Floor
Chicago, IL 60661
(312) 775-8136
(312) 444-0498 Fax
Emas@mhmlaw.com
Appearing on behalf of Guidant

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APPEARANCES CONTINUED

KENYON & KENYON
BY: THOMAS J. MELORO
Attorney at Law
One Broadway
New York, NY 10004-1050
(212) 425-7200
(212) 425-5288 FAX
Tmeloro@kenyon.com
Appearing on behalf of Boston Scientific Scimed and Boston Scientific Corporation

KENYON & KENYON
BY: MICHAEL JOHNSON
Attorney at Law
One Broadway
New York, NY 10004-1050
(212) 425-7200
(212) 425-5288 FAX
Mjohnson@kenyon.com
Appearing on behalf of Boston Scientific Scimed and Boston Scientific Corporation

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APPEARANCES CONTINUED

PERKINS COIE, LLP
BY: RAMSEY M. AL-SALAM
Attorney at Law
1201 Third Avenue, Suite 4800
Seattle, WA 98101
(206) 264-6385
(206) 583-8500 Fax
Appearing on behalf of NeoRX and the witness

ALSO PRESENT:
CASEY MULDOON,
Videographer, Naegeli Reporting Corporation

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the inventors were of any of the inventions that were submitted to the US Patent Office?

MR. AL-SALAM: Well, I think that's getting a little too close to the attorney-client privilege. I'll instruct him not to answer.

MR. TIMMONS: Well, I'm not asking for the -- I'm asking -- it's a "yes" or "no" question, whether or not --

MR. AL-SALAM: I know, but it's a specific question. I mean, you know, what I think is if you talk the general nature or subject matter of discussion, but when you're saying did they ask you this specific question, then I think at that point you're getting into the attorney-client privilege.

MR. TIMMONS: Well, let me try to parse that, because what I've asked him is whether or not they ever approached him to find out the inventors of any applications. I've not asked him if they went to him on the PCT application and said "Should Anderson be that one?"

My question is, generally: Did the legal department ever seek your advice or input as to the inventors of any of the applications that were sent to the US Patent Office.

MR. AL-SALAM: I'll allow you to ask that

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question.

MR. TIMMONS: Thank you.

MR. MELORO: And I'll object to the form of it.

MR. TIMMONS: That's the least of my problems.

Can you read that one back, what I said to Mr. Al-Salam?

(Whereupon, the previous question was read back by the court reporter, as requested.)

MR. MELORO: Objection to form.

THE WITNESS: They never asked me for my advice of who the inventors were going to be. They asked me to answer questions on who did what and they would determine the inventorship.

BY MR. TIMMONS:

Q. Thank you.

If you could, in Klein Exhibit 11, turn to Tab 1, please, and then go to Page 26 of the application, please. It's at the top.

A. (Witness complies.)

Q. Okay. At the bottom of Page 26 at Line 28 or so, there's a sentence that starts "Other examples of cytostatic agents."

Do you see that?

A. Mine goes to 36.

Q. Yeah. But on Line 28 --

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A. Oh, 28.

Q. -- if you'd start at 28, there's a sentence that starts "Other examples."

A. (Witness complies.)

Yes, "Other examples."

Q. If you could read starting with "Other examples" on to the end of that paragraph and, again, anything else that you need to feel comfortable about that, I'd like to ask you some questions about that portion, please.

A. (Witness complies.)

Yes.

Q. Ready? Okay. My question is, on Line 35 or so, it talks about TGF-alpha or -beta?

Do you see that?

A. Mm-hm.

Q. What effect did TGF-alpha or -beta, to your understanding, have on the proliferation of smooth muscle cells in January of 1993?

A. I don't have a recollection of what was -- what the status of that was.

Q. Okay. If you could read this section and tell me whether or not you were trying to increase or decrease the activity of TGF-beta in this section of your patent application?

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MR. MELORO: Objection to the form of the question.

THE WITNESS: It merely means, I think, to modulate it, whether it's increase it or decrease it. It may mean to stabilize it. So it could be -- it could be either. And I wouldn't know from reading -- I mean, I can't remember back what we were thinking at that time.

BY MR. TIMMONS:

Q. Okay. Were you looking at TGF-beta personally at that time?

A. No. That was -- we were not doing experiments on it at that time. We were considering different mechanisms of action that might be applicable to what we were trying to do.

Q. Did you take the TGF-alpha or -beta out of the literature that was existent at that time?

MR. MELORO: Objection to form.

THE WITNESS: I don't recall.

BY MR. TIMMONS:

Q. Don't close it up.

A. Yeah.

Q. Go on to the next page where it talks about, at Line 21 or so, "representative examples of cytoskeletal inhibitors."

Do you see that?

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A. Yes.
Q. And if you remember before, we went through another section of an earlier application that talked about representative examples of cytoskeletal inhibitors.
Now, this section includes cytochalasins and taxol, correct?
A. Correct.
Q. Who identified cytochalasins as a cytoskeletal inhibitor?
MR. MELORO: Objection to form.
THE WITNESS: I do not recall.
BY MR. TIMMONS:
Q. Was it --
MR. MELORO: I just wanted to ask you: There's some handwriting in that paragraph. Do you know what the source of it is?
MR. TIMMONS: No. I assume it's a patent office note. But not from us, as far as I know.
BY MR. TIMMONS:
Q. Did Mr. Klein identify cytochalasins as a cytoskeletal inhibitor?
A. I believe so. We had talked about a number of them, and everybody in our group was searching literature for any type of compound that may have an effect.

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Q. And the paragraph above the last sentence states "Preferred antimigratory and therapeutic agents are the cytochalasins."
Do you see that?
A. (Witness peruses document.)
Q. The last sentence.
A. Oh, the last --
Q. It starts at Line 19.
A. Oh, okay. (Witness peruses document.)
Yes.
Q. Is the only affect of cytochalasins on vascular smooth muscle cells as an antimigratory?
A. No.
Q. What other effects do the cytochalasins have on vascular smooth muscle cells?
A. Well, depending on the dose, it can reach a level where it causes death or it can inhibit anything that has to do with actin positioning, any type of mediator response. It could affect those, too.
Q. Okay. Would it -- at the correct dosage, could it affect the proliferative effect of the vascular smooth muscle cells?
A. Yes.
Q. And if you used the right dosage, could you also inhibit the contractile characteristics of vascular

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smooth muscle cells?
A. Under certain circumstances.
Q. Okay.
MR. TIMMONS: Let's mark as Kunz Exhibit 14 a letter from Lucy Hicks at UAB Research Foundation to Debra Leith at NeoRx Corporation dated April 15th, 1993, NeoRx 100020 through -21.
(Whereupon, a 1-page letter to Lucy Hicks from Debra Leith dated 2/19/93, was marked Exhibit-14 for identification.)
BY MR. TIMMONS:
Q. Have you ever seen that document before?
A. (Witness peruses document.)
I don't recall this document.
Q. Okay. Let me ask you generally, then, whether or not you understood that it was UAB's position that Dr. Anderson should be a named inventor on the PCT application filed September 25th, 1992, and the CIP application filed January 28, 1993.
A. You know, I'm -- you know, I'm not sure, because I left all of the inventorship and who was going to appear on these, that was handled by the legal department. And I don't recall anything other than that. They handled that type of thing, so I don't recall ever seeing this letter. And as far as I knew, the assigning

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of the inventors was something that was under development.
Q. Okay. If you could turn to the second page of this document.
A. (Witness complies.)
Q. If you could read the first paragraph to yourself, please.
A. (Witness complies.)
Q. Ready?
A. Okay.
Q. Do you agree with Ms. Hick's statement that "Dr. Anderson, in conjunction with Dr. Kunz, were the persons who conceived the invention of using NeoRx antibodies either coupled directly to a therapeutic agent or bound to the time-released formulation of the therapeutic agent to target the therapeutic agent to the site of vascular trauma or disease to inhibit restenosis"?
A. Yes.
Q. You agree with that?
A. Mm-hm.
Q. Is that a "yes"? I'm sorry.
A. Yes. Yes.
Q. No "mm-hms."
A. Yes.
Q. Do you also agree with the last sentence, that "Dr. Anderson also contributed to the claims relating

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to the use of a catheter to accomplish administration of the therapeutic agent/therapeutic conjugate"?
MR. MELORO: Objection; lack of foundation with reference to the claims.
THE WITNESS: I can't remember the exact recollection of that. We talked about catheters. I'm not sure that that wasn't something – it may well be that Pete Anderson brought that up, but it doesn't mean that it wasn't -- I may not have paid much attention to it at that time because I may have also known about catheters but, so...
BY MR. TIMMONS:
Q. Do you have any reason --
A. And I have no reason to disagree that that was Pete's concept.
Q. Okay. Let me -- let me go up to the first sentence where it talks about where the antibodies are coupled directly to the therapeutic agent or bound to the time-released formulation of the therapeutic agent.
What was the time-release formulation of the therapeutic agent?
A. We went through a number of things for time. This -- I'm just looking at the date at this. This was '93.
Some of the first things that Pete and I

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talked about as far as time-release was that the -- around the time that we first discussed, there was a biodegradable stent. One of the first things we thought of was incorporating our material into a biodegradable stent. And from there, it progressed to microparticles, codeines on regular stents or graphs or any type of implantable device.
Q. Okay. Let me follow up on that a little bit.
Did there come a time where the therapeutic agent alone, not bound to a conjugate, was used in a sustained-release formula?
A. Yeah. Sustained-release formula, yes.
Q. When was that work done, approximately?
A. Well, that's why I was looking at the date here. It may have been around this time.
Q. So did Dr. Anderson have input into the idea of using the therapeutic agent without the conjugate in a sustained-release formula?
A. Yes.
Q. Okay. You said that one of the -- some of the things you were talking about with Dr. Anderson was incorporating material into a biodegrade stent.
A. Yes.
Q. Did you ever make a biodegradable stent with a therapeutic agent in it?

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A. No.
Q. Did you ever coat any kind of stent with a therapeutic agent?
A. Yes.
Q. When did you do that?
A. That must have been around '95, something like that.
Q. Okay.
MR. TIMMONS: Kunz 15 is a document dated April 15th, 1993. The Production number is NeoRx 100022 through -25.
(Whereupon, a 4-page fax to Debra Leith from Lucy Hicks dated 4/15/93 was marked Exhibit-15 for identification.)
BY MR. TIMMONS:
Q. And Dr. Kunz, it's a letter from Bob Schroff - Robert Schroff, sorry - to Kenneth Roozen. And my question is: Have you ever seen this document before?
MR. MELORO: With the handwriting or in any form?
MR. TIMMONS: That's a good question. In any form. That's the only one I had, so...
THE WITNESS: (Witness peruses document.)
I don't recall ever seeing this.
BY MR. TIMMONS:

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Q. Okay. Did you discuss with -- is it Dr. Schroff?
A. Yes.
Q. -- Dr. Schroff the issue as to whether or not -- and I'm reading from the first paragraph.
A. Mm-hm.
Q. -- as to whether or not Dr. Anderson should be -- should remain as inventor on recent patent applications drafted and submitted by NeoRx?
A. I must have at some point, but I can't remember precise discussions or whether it was with him. I'm trying to recall.
I'll have to answer "yes," because there were some discussions on Pete staying in it with an inventor. I don't remember whether I discussed those with Bob Schroff or with the legal department at NeoRx.
Q. Okay. Well, I'm sure your attorney's going to object if I ask you if you went to the legal department. But did you discuss -- I'd like to limit it to the things you can remember you talked about with Bob Schroff.
Did you discuss with Bob Schroff the decision that Pete Anderson would be named as an inventor on all pending applications?
MR. AL-SALAM: And even if those discussions

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involved communications with the legal department, for example, if Mr. Schroff told you what the legal said or vice versa, I would instruct you not to answer.

THE WITNESS: I can't remember precisely discussing this with Bob Schroff. It may have all been with the legal department, but...

BY MR. TIMMONS:

Q. Okay.

A. I don't remember discussing it in much detail at all.

Q. Okay. Fine.

If you'd go to the second paragraph, about a third of way down, it says, "We are no longer pursuing an immunoconjugate approach."

Do you see that?

A. Yes.

Q. When would --

A. Wait a minute.

Q. Sorry.

The fourth line down, it says, "We are no longer pursuing an immunoconjugate approach."

A. (Witness peruses document.)

Yes, I see it.

Q. When was the immunoconjugates approach abandoned, to your knowledge?

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MR. MELORO: Objection to the characterization.

THE WITNESS: That was abandoned fairly -- fairly early, as far as an immunoconjugates.

"Abandon" is a bad word. I mean, you never abandon --

BY MR. TIMMONS:

Q. Well, let me ask a better question.

A. The emphasis shifted probably away from the immunoconjugates to drugs alone. And that emphasis probably occurred in the -- prior to this. This was '93. It may have occurred a few months before this.

Q. And the emphasis switching to drugs alone, was that therapeutic agents for preventing restenosis?

A. Yes.

Q. Thank you. And how were they to be delivered?

A. Once we shifted away from there, they would be delivered by some biodegradable material that was within the vessel.

Q. Okay. Would you agree with Dr. Schroff's statement that "We have continued to build on the initial concepts and Pete has continued to be a valuable collaborator in our studies"?

A. Yes.

Q. Let me just direct you to the third paragraph

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where "Dr. Schroff proposes a modification to our original agreement."

Were you involved at all in the modification of the agreement between NeoRx and UAB regarding Dr. Anderson's work?

A. No.

Q. Okay. Do you know if that original agreement was modified?

A. No, I didn't know that.

Q. Okay. If you could turn to the second page.

A. (Witness complies.)

Q. In the middle of the second paragraph, there's a sentence that states "I would propose that the scope of our agreement be modified to include any products covered by an allowed claim in a patent naming Pete Anderson or any other UAB investigator as an inventor."

Did you discuss that proposal with Dr. Schroff?

A. I don't recall discussing that.

Q. Okay. Were you aware of any agreements made between UAB and NeoRx that would cover any products covered by an allowed claim in a patent naming Pete Anderson as an inventor?

A. I have no recollection of any of that.

MR. TIMMONS: This is going to be quick, then.

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Let me mark as Kunz 16 an agreement dated September 1, 1993, NeoRx 100026 through -37.

(Whereupon, a 12-page Agreement was marked Exhibit-16 for identification.)

BY MR. TIMMONS:

Q. Have you ever seen that document before?

A. (Witness peruses document.)

I don't remember seeing this document.

Q. Okay.

MR. TIMMONS: Let's mark as Kunz Exhibit 17 a December 3rd, 1996 letter from Anna Wight to Dr. Peter Anderson, UAB -83 through -99.

(Whereupon, a 1-page letter to Peter Anderson from Anna Wight and a 16-page copy of the claims were marked Exhibit-17 for identification.)

BY MR. MELORO:

Q. Have you ever seen that document before?

A. (Witness peruses document.)

No. I don't recall ever seeing this.

Q. Okay. Are you aware that NeoRx offered to add Peter Anderson as an inventor to applications filed by NeoRx?

MR. MELORO: Objection; lack of foundation.

THE WITNESS: I don't understand the question. To what?

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was with the nanoparticles. And Pete Anderson -- this was a carryover of effects of nonproliferation, and Pete Anderson put us in contact with Southern Research Institute, that could manufacture the nanoparticles for antiproliferative effects.
BY MR. TIMMONS:
Q. Okay. If you could read through Claim 1 again and tell me where it talks about nanoparticles.
A. Or am I in the wrong patent?
Q. You should be in the -928 patent. Is that where...?
A. Let me read the one --
Q. Let me see if you have the right patent. The -928 patent, and I want to direct your attention to Claim 1 -- read whatever you want, but Claim 1 is what I am interested in.
MR. MELORO: I'm just going to point the witness to exactly where Claim 1 is.
MR. TIMMONS: Sure.
MR. MELORO: So it starts right there and goes down to there (indicating).
After you've finished reading, Mr. Timmons will tell you what his question is.
THE WITNESS: (Witness peruses document.)
Okay. The question?

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BY MR. TIMMONS:
Q. The question is whether or not Dr. Anderson had any role in the invention of Claim 1?
MR. MELORO: Objection to form.
THE WITNESS: Okay. In reading this claim - and I've gotten these mixed around, I'm not sure which one would - but this one mentions a stent in here.
BY MR. TIMMONS:
Q. Mm-hm.
A. When we mention a stent, we're talking about antiproliferative, and that falls into the early contributions of Pete with antiproliferatives.
Q. Okay. So Claim 1 -- in your opinion, Dr. Anderson is a co-inventor of Claim 1?
MR. MELORO: Objection.
THE WITNESS: I don't know whether it was determined he was a co-inventor. I said that he contributed to any of the aspects of antiproliferatives.
BY MR. TIMMONS:
Q. Okay.
A. So from that respect.
Q. If you would look at Claim 2, I have the same question about that.
A. (Witness peruses document.)
Yes.

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Q. Dr. Anderson did have a role in that claim?
A. Yes, for the same reasons.
Q. And then Claim 8, could you take a look at that and tell me whether Dr. Anderson had any role in that?
MR. MELORO: Same objections to those questions.
THE WITNESS: (Witness peruses document.)
Yes, for the same reasons.
BY MR. TIMMONS:
Q. Okay. If you could turn to the -609 patent, please. It's Klein Exhibit 8.
A. (Witness complies.)
Q. If you could turn to Column 65 again, please.
A. (Witness complies.)
Q. And if you could just read Claim 18 to yourself, please.
A. (Witness complies.)
Okay.
Q. Okay? My first question is whether or not the cytostatic therapeutic agent that's in Claim 18 has the same definition for you as the cytostatic agent we talked about in the -928 patent?
MR. MELORO: Let's go back and pull out the -928 patent.
BY MR. TIMMONS:

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Q. Well, why don't we do this. It would probably be easier if I just ask you what a cytostatic therapeutic agent is in Claim 1 on the -609 patent.
MR. MELORO: Objection to form.
MR. MAS: Claim 1 or Claim 18?
MR. TIMMONS: Claim 18. Sorry.
MR. MELORO: Same objection.
THE WITNESS: (Witness peruses document.)
The answer would be yes.
BY MR. TIMMONS:
Q. Okay. I probably screwed up the question completely. Let me just take that and run. I'm kidding. I'm kidding.
My question is whether or not -- could you tell me the definition of "cytostatic therapeutic agent" as you would understand in Claim 18?
A. Oh. I thought you asked if they were the same.
The definition I gave you is a broad one. It's all categories. It's the same as I repeated before.
Q. Thank you. Thank you very much.
And as to Claim 18, did Dr. Anderson have any role in the invention of Claim 18?
MR. MELORO: Objection to form.
THE WITNESS: Yes.

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BY MR. TIMMONS:
Q. Okay. And if you'd look at Claim 55 and read it to yourself, please.
A. Oh, wait a minute. Wait a minute.
Q. Sorry. Go ahead.
A. (Witness peruses document.)
Yeah. Stents. It's the same.
Q. Okay. Claim 55, please, if you could take a look at that.
A. (Witness complies.)
Okay.
Q. Did Dr. Anderson have any role in the invention of Claim 55?
MR. MELORO: Objection to form.
THE WITNESS: Yes.
BY MR. TIMMONS:
Q. Okay. If I can summarize, it seems that it's your opinion that Dr. Anderson had a role in the invention of any claim that relates to the antiproliferative effects of a therapeutic agent, correct?
MR. MELORO: Objection to form.
THE WITNESS: Yes. That's my personal opinion.
BY MR. TIMMONS:
Q. Okay. Now, is there any reason that you're aware of that Dr. Anderson wasn't named as an inventor on

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any of the three patents that we just went through?
MR. AL-SALAM: I caution the witness not to disclose the substance of any attorney-client communications in answering that question.
THE WITNESS: Well, I don't think I have to. I played no role in determining who was going to be on the patents.
BY MR. TIMMONS:
Q. Did you ever have discussions with attorneys - and this is a "yes" or "no" - as to whether or not Dr. Anderson should be added to any of the three patents that we've just gone through?
A. Any of the three patents. Yes. I answered specific questions that they asked me.
Q. And that was NeoRx's attorneys?
A. Yes.
Q. Okay. And when did that occur, just -- I just need a date. I don't need to know substance.
A. I can't remember specific dates.
I may have had to answer certain questions about --
MR. JOHNSON: Don't disclose the substance of those communications.
BY MR. TIMMONS:
Q. And I was just looking for dates.

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MR. MELORO: He was just asking for dates.
THE WITNESS: I can't remember precise dates.
BY MR. TIMMONS:
Q. But you don't know why Dr. Anderson isn't the named inventor on -009, -928, or -609 patents, right?
A. No.
Q. Okay.
MR. MELORO: Can we go off the record for a second?
MR. TIMMONS: Sure.
THE VIDEOGRAPHER: The time is 4:02 p.m. Going off the record.
(Pause in the proceedings.)
THE VIDEOGRAPHER: Back on the record. The time is 4:12 p.m.
BY MR. TIMMONS:
Q. If you could put in front of you -- let me just put in front of you the...
Let me just put in front of you again the -009 patent and have you turn to Claim 1 that's in Column 65.
A. (Witness complies.)
Q. And we talked a little bit about the sustained-release dosage form that's required by that claim.

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Do you remember that?
A. Which --
Q. Column 1, it says, "Administered to a mammal the sustained-release dosage form."
A. Claim 60 --
Q. No. Claim 1 on Column 65. Sorry.
A. Okay. Yeah.
Q. And we talked about having a sustained-release dosage form of cytochalasin-B that would not inhibit proliferation.
Do you remember that?
A. Yes.
Q. Okay. And your point was that you could have a sustained-release dosage form that released it quickly enough as to not affect the proliferation of the cells; is that right?
MR. MELORO: Objection to form.
THE WITNESS: Quickly or rapid enough.
BY MR. TIMMONS:
Q. Okay. Let me -- in the same patent, could you turn to Column 9? It's more towards the front of the patent.
A. (Witness complies.)
Q. Okay. Column 9, Line 36 or so, talks about sustained release. Do you see that?

UAB RESEARCH FOUNDATION

The University of Alabama at Birmingham
1825 University Boulevard
113 Mortimer Jordan Hall
Birmingham, Alabama 35294-2010

Telephone (205) 934-9911 Fax (205) 934-1221

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FROM: Lucy C. Hicks, Esq.

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To Kenneth Roozen	From Bob Sabbatini
Co. UAB	Co. NeoRx
Dept.	Phone # 206-281-7001
Fax # 205-934-1221	Fax # 206-298-9442

NeoRx Corporation
410 West Harrison
Seattle, WA 98119-4007
206-281-7001
Fax 206-284-7112

206-298-9442

June 14, 1993

Via Fax: 205-934-1221

Kenneth J. Roozen, Ph.D.
Vice President for Research and University Affairs
Executive Director, UAB Research Foundation
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, AL 35294-2010

To Dr. Robert Schroff....
To facilitate discussions I've offered comments & questions —
Ken

Dear Ken,

I believe you are aware through discussions with Pete Anderson and Lucy Hicks that there has been some issue as to whether Pete should remain as an inventor on recent patent applications drafted and submitted by NeoRx. After several discussions, we have decided that Pete will be named as an inventor on all pending applications.

The issue of Pete's inventorship arose in the context of the progression of our research from the initial concept of monoclonal antibody-based immunoconjugates for the treatment of restenosis, to our present research activities. We are no longer pursuing an immunoconjugate approach. However, we have continued to build on the initial concepts, and Pete has continued to be a valuable collaborator in our studies. Since the initial patent application was filed in September of 1991, NeoRx has filed three continuations of that original application. The patent family has become quite complex, involving a number of different technical approaches and potential product formulations. The most recent patent application also involves additional non-NeoRx inventors, further complicating the picture.

What I would like to do at this time is propose a modification to our original agreement. As we discussed briefly during my visit in February, NeoRx must finance these development efforts through a variety of corporate alliances. That reality, and the fact that our current development activities have caused us to take licenses on additional technologies beyond our license with UAB, necessitate the proposed modifications to our agreement.

NeoRx 100024
HIGHLY CONFIDENTIAL
ATTORNEYS' EYES ONLY

Our agreement currently calls for a $20,000 license fee (which has been made), and two additional milestone payments of $50,000 each upon the initiation of Phase III clinical trials and upon product approval. We do not propose any modifications to these payments.

Each product?

The agreement also calls for a 1% royalty on net sales by NeoRx or its sublicensee for the life of the last-to-expire patent, or for 10 years. This provision was appropriate for the originally conceived immunoconjugate product that NeoRx intended to market directly, but is not appropriate for the product formulations currently under investigations. In addition, the current agreement covers only "conjugates". This definition is too constrained, as we no longer are investigating conjugates as described in the original patent application and the NeoRx-UAB agreement. I would propose that the scope of our agreement be modified to include any products covered by an allowed claim in a patent naming Pete Anderson or any other UAB investigator as an inventor. The current royalty arrangement also assumes that all products are in the field of coronary heart disease. Some of the claims that have been included in the continuation applications are for cancer and other non-coronary applications that have not directly grown out of our collaboration with UAB.

Page 2 of current agreement "any use"

I would propose the following revised terms for our agreement with respect to royalties:

Does this include a NeoRx subsidiary or affiliate?

For products sold by NeoRx:

- 0.5% royalty on net sales if a UAB co-inventor patent only is required,
- 0.25% royalty on net sales if a non-UAB patent required in addition,
- 0.05% royalty on net sales of products approved for a non-coronary disease indication.

Would be ok if only paid on 1st patent(s) %

As of 7/16

This seems like too long a bit from 1st product sales to 1% of NeoRx royalties already paid on 1st

For products sold by a NeoRx sublicensee:

Suggest 5% → 2.5 → 1% of royalties paid to NeoRx if UAB co-inventor patent only is required,

2.5% → 1.25 → 0.5% of royalties paid to NeoRx if a non-UAB 3rd party patent required in addition,

1% → 0.5 → 0.1% of royalties paid to NeoRx on products approved for a non-coronary disease indication.

1) What is the term of your proposed modification? last to expire patent

2) What about other terms of remuneration (i.e. non-cash royalty) paid to NeoRx by sublicensee? did suggest 5%....

ok 7/16

Each Product?

There is a provision in the current agreement for a minimum annual royalty payment of $10,000 once products are approved. I see no need to alter that provision.

I hope that these modifications seem fair and reasonable to you. We value our collaboration with UAB and have every intention of a continued close relationship. These revised terms should provide a format for that ongoing collaboration. Please let me know your thoughts on the proposed modifications. Once we are in agreement, we would be happy to draft a modified agreement for your review.

Sincerely yours,

Robert W. Schroff, Ph.D., M.B.A.
Vice President and General Manager
Cardiovascular Products

cc: Pete Anderson

UAB RESEARCH FOUNDATION

[redacted]

September 10, 1993

FAX: (206) 298-9442

Bob Schroff, Ph.D., M.B.A.
Vice President and General Manager
Cardiovascular Products
NeoRx Corporation
410 West Harrison
Seattle, WA 98119-4007

RE: UAB RF and NeoRx Agreement/
Pete Anderson
UAB RF Ref: FY91-031

Dear Bob:

Per our conversation during August, you indicated your office would be forwarding to our attention a draft of the Agreement between NeoRx and the UAB Research Foundation. I would appreciate a call to indicate when I can expect said document. If I can facilitate the execution of this document in any way, please do not hesitate to ask me.

With Warmest Regards,

Lucy C. Hicks, Esquire
Program Manager II -
Patents and Licenses

LCH/sbh
c: Dr. Kenneth J. Roozen
[redacted]

DEFENDANT'S EXHIBIT
Anderson 18
1-18-05 SH

The University of Alabama at Birmingham
113 Mortimer Jordan Hall • 1825 University Boulevard
Birmingham, Alabama 35294-2010 • (205) 934-9911 • FAX (205) 934-1221

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UAB01055

ORIGINAL

AGREEMENT

THIS AGREEMENT is entered into as of September 1, 1993, by and between NEORX CORPORATION ("NeoRx"), a Washington corporation whose principal place of business is located at 410 West Harrison Street, Seattle, Washington 98119, and THE UAB RESEARCH FOUNDATION ("UABRF"), located at 1825 University Boulevard, Birmingham, Alabama 35294-2010.

WHEREAS, NeoRx is engaged in research and development of pharmaceutical products; and

WHEREAS, NeoRx desires to develop certain products related to vascular trauma in general, and coronary artery angioplasty restenosis in particular; and

WHEREAS, UABRF is willing to grant NeoRx exclusive rights in any technology developed according to the terms and conditions of this agreement ("the Agreement");

NOW, THEREFORE, in consideration of the mutual representations, warranties and promises herein contained, the parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 "Technology" shall mean any present and future patent applications and confidential information, including know-how, trade secrets or other data ("Know-How"), related to vascular trauma in general, and coronary artery angioplasty restenosis in particular, that is owned or controlled (in the sense of being able to grant licenses) by UABRF and that relates specifically to work conducted by Dr. Peter Anderson in conjunction with NeoRx.

1.2 "Post-Angioplasty Restenosis" shall mean proliferation of vascular smooth muscle cells in response to trauma associated with angioplasty of coronary arteries in human patients.

1.3 "Product" shall mean each product developed in whole or in part by NeoRx that is covered by a claim in a Patent.

1.4 "Patent" shall mean an issued and valid US or foreign patent that includes a claim that encompasses Technology and that names a UABRF employee as an inventor.

1.5 "Field of Use" shall mean any use.

1.6 "NeoRx" shall mean NeoRx Corporation, any person, corporation, firm, partnership, or other entity in which NeoRx owns or controls, either directly or indirectly, at least 50% of the voting stock thereof, and any legal representative, successor or assignee of NeoRx.

1.7 "Net Sales" shall mean the invoice amount received from commercial sales to independent, unrelated parties in bona fide arms-length transactions of the Product, less the following deductions:

(i) Trade and/or quantity discounts actually allowed and taken in such amounts as are customary in the trade;

(ii) Sales and other excise taxes and duties paid, absorbed, or allowed;

(iii) Amounts billed to cover transportation costs;

(iv) Actual cost of transportation charges, if transportation charges are not separately billed; and

(v) Amounts repaid or credited by reason of rejection, defects, or return, or because of retroactive price reductions.

1.8 "Phase III Clinical Trials" shall mean multicenter human trials conducted under provisions of 21 CFR Part 312, Subpart A, Section 312.1(a)(2) relating to Form FD 1571, Item 1C, with respect to the use of Product in vivo in humans.

1.9 "Product License Application" shall mean an initial product license application covering a Product filed with the Food and Drug Administration, and any amendments thereto.

ARTICLE II
LICENSE

2.1 UABRF hereby grants to NeoRx, subject to the terms and conditions herein, an exclusive world-wide license in the Field of Use to develop Technology and to make, have made, use, sell, and have sold Product for the term of this Agreement. Said license shall grant to NeoRx the right to grant sublicenses no greater in scope than the license granted herein. Any sublicensees shall be subject to the provisions of this Agreement.

2.2 During the term of the Agreement, NeoRx shall pay for filing and prosecution of U.S. and foreign patent application(s) covering Joint Invention(s) (as defined in Section 8.2(c), below).

In addition, NeoRx will make payments to UABRF for collaborative studies involving a pig model system, so long as the results of preliminary experiments warrant initiation and continuation of such collaborative study. Payments to UABRF for these collaborative studies will be negotiated prior to initiation of each such study.

ARTICLE III
DEVELOPMENT BY NEORX

3.1 NeoRx, at its own cost and expense, shall expend reasonable efforts and resources to carry out the development and marketing of at least one Product to the point of a Product License Application with the Food and Drug Administration within ten years of the effective date of this Agreement, unless this deadline is extended by mutual agreement of the parties. UABRF shall not unreasonably withhold approval of any request by NeoRx to extend this period, if such request is supported by a reasonable showing by NeoRx of due diligence toward bringing the Product to commercialization. "Due diligence" shall include any reasonable and diligent application for approval required by any government agency within the United States.

3.2 NeoRx agrees to use UABRF for the conduct of requisite clinical trials of the Product, wherever reasonably practicable.

3.3 After bringing Product to the point of commercialization, NeoRx agrees to use reasonable efforts to keep at least one Product reasonably available to the public during the term of this Agreement.

ARTICLE IV
Collaboration by UABRF

UABRF shall expend reasonable and diligent efforts to assist NeoRx in the research and development of Product. These efforts shall include the active collaboration and consultation of Dr. Anderson and other appropriate research and clinical personnel. Further, UABRF shall perform collaborative studies involving a pig model system and clinical trials, so long as the results of preliminary experiments warrant initiation and continuation of such collaborative studies.

ARTICLE V
ROYALTIES AND PAYMENTS

5.1 NeoRx shall make the following non-refundable milestone payments with respect to each Product:

(i) $50,000 upon initiation of Phase III Clinical Trials with the first Product; and

(ii) $50,000 upon approval by the Food and Drug Administration of each Product License Application, but no more than one such payment will be made for each Product License Application as defined herein.

5.2 NeoRx shall pay:

(A) one of the following royalty rates on Net Sales of Product by NeoRx:

0.5% if only a Patent covers the Product;

0.25% if a Patent covers the Product, and if royalties paid by NeoRx to one or more third parties for the Product total 1% or more of Net Sales of Product by NeoRx; and

0.05% if a Patent covers the Product and the Product has been approved for a non-coronary disease indication; and

(B) one of the following royalty rates for Product that is sold by a NeoRx sublicensee:

2.5% of royalties paid to NeoRx by its sublicensee with respect to such Patent, if only a Patent covers the Product;

1.25% of royalties paid to NeoRx by its sublicensee with respect to such Patent, if a Patent covers the Product, and if royalties paid by NeoRx to one or more third parties for the Product total 5% or more of royalties paid to NeoRx by its sublicensees for Product that is sold by such sublicensees; and

0.5% of royalties paid to NeoRx by its sublicensee with respect to such Patent, if a Patent covers the Product and the Product has been approved for a non-coronary disease indication.

These royalties shall be paid by NeoRx to UABRF for a period ending upon the expiration date of the last-to-expire Patent. For any Product, if multiple issued Patents cover the Product, a portion of the Product or related methods, the total royalty rate under this Agreement shall not exceed 0.5% of Net Sales by NeoRx or 2.5% of royalties paid to NeoRx by its sublicensee with respect to such

Patents. If NeoRx receives non-cash consideration from a sublicensee as partial or complete consideration with respect to such Patents, NeoRx shall pay UABRF 2.5%, 1.25% or 0.5% (as described in (B), above) of an imputed royalty of 5% on Product that is sold by the sublicensee. If cumulative annual royalties, paid or owing at the end of any calendar year wherein Product has been sold, do not exceed $10,000, NeoRx shall pay UABRF the difference between $10,000 and cumulative annual royalties paid or accrued for that calendar year. Such payment shall be made within ninety (90) days after December 31. If NeoRx has paid UABRF for animal studies, clinical trials and/or other collaborative services during the current calendar year, such payments by NeoRx to UABRF during the current calendar year shall be deemed to be cumulative annual royalties and be credited against the $10,000 minimum cumulative annual royalties.

5.3 NeoRx agrees to submit to UABRF, within ninety (90) days after each calendar half year ending June 30 and December 31 wherein Product has been sold, reports setting forth for the preceding six month period: (i) the amount of Product sold by NeoRx; (ii) the amount of royalties received by NeoRx from its sublicensees; and, (iii) in the event of a payment to UABRF by NeoRx based upon an imputed royalty, the amount of Product sold by such NeoRx sublicensees.

5.4 NeoRx and/or its sublicensees shall pay all necessary expenses for domestic and foreign commercialization of Product, and such expenses shall not be deducted from any payments due UABRF as provided herein.

5.5 All royalties shall be paid to UABRF in lawful money of the United States. NeoRx shall be responsible for compliance with all currency exchange laws and regulations.

ARTICLE VI
REPORTS AND RECORDS

6.1 NeoRx shall keep and shall cause its sublicensees to keep accurate and complete records of Product made, used, sold, or otherwise disposed of under this Agreement appropriate to determine the amount of royalty fee due hereunder. Such records shall be retained for at least three years following a particular reporting period. Together with each six month royalty payment, NeoRx shall provide UABRF with a written report with respect to the six months for which royalties are paid. Such reports shall state the Net Sales of all of the Products which are both manufactured by and sold or otherwise distributed by NeoRx (and its sublicensees), and shall specify in reasonable detail the manner by which the royalty payment for the six months period was calculated. In no event shall NeoRx owe UABRF more than a 0.5% royalty rate on Net Sales by NeoRx or 2.5% of royalties paid to NeoRx by its sublicensees for

any given Product and its related manufacture, distribution and ultimate sale.

6.2 NeoRx (and its sublicensees) shall keep and maintain true and complete books and records pertaining to its distribution and sale of the Product in sufficient detail to enable an independent certified public accountant, selected by UABRF, to determine with accuracy whether NeoRx has fully paid all sums payable to UABRF pursuant to this Agreement. NeoRx (and its sublicensees) shall maintain its books and records for at least three years following the date of a particular payment. NeoRx (and its sublicensees) shall make such books and records, as well as appropriate personnel, available at reasonable times during regular business hours for inspection and inquiry (subject to customary confidentiality agreements) by UABRF's designated certified public accountant. In addition, NeoRx (and its sublicensees) shall supply UABRF's certified public accountant with all details and supporting data reasonably necessary to verify the accuracy and completeness of all reports and payments required by this Agreement.

ARTICLE VII
PROPRIETARY AND CONFIDENTIAL INFORMATION

7.1 "Proprietary and Confidential Information" as herein used, means any and all information and materials concerning any aspect of each respective party not generally known to persons but those associated with that party. This shall include, but not be limited to, clinical data, concepts, processes and techniques, trade secrets, business strategies (whether or not implemented) and financial information.

7.2 Proprietary and Confidential Information is disclosed in the strictest confidence and shall be considered confidential and proprietary information of the disclosing party. Except as otherwise provided herein, any Proprietary and Confidential Information that is disclosed in writing or orally between the parties shall be maintained as confidential for a period of five years from the date of this Agreement.

7.3 Except as authorized herein or by the disclosing party, the receiving party will not duplicate, transfer or disclose nor allow any other person to duplicate, transfer or disclose any of the Proprietary and Confidential Information. The receiving party will safeguard all Proprietary and Confidential Information at all times so that it is not exposed to or used by unauthorized persons and will exercise at least the same degree of care used to protect its own confidential information. Except as provided herein, the receiving party shall not use Proprietary and Confidential Information without the prior written consent of the disclosing party, which consent shall not be unreasonably withheld.

7.4 The restrictive obligations set forth above shall not apply to the disclosure or use of any Proprietary and Confidential Information which: 1) is or later becomes publicly known under circumstances involving no breach of this Agreement by the receiving party; 2) is already known to the receiving party at the time of receipt of the information; 3) is lawfully made available by a third party; or 4) is independently developed by an employee of the receiving party who has not been privy to the Confidential Information provided.

7.5 NeoRx shall have the right to disclose Proprietary and Confidential Information of the disclosing party to the Food and Drug Administration in the process of obtaining approval of a Product; to disclose Proprietary and Confidential Information of the disclosing party to collaborators or potential collaborators under conditions of confidentiality; and to use Proprietary and Confidential Information of the disclosing party in patent applications describing the Technology.

7.6 Except as explicitly set forth herein, both parties understand that no patent rights or licenses are granted by this Agreement. The disclosure of Proprietary and Confidential Information hereunder shall not result in any obligation for either party to grant any party any rights in and to the patent rights or other Proprietary and Confidential Information of the other party, and that no other obligations of any kind are assumed by or implied against either party, except for those stated herein.

7.7 UABRF agrees to submit to NeoRx for review, at least thirty (30) days prior to oral publication or submission for written publication to any third party not bound by proprietary information restrictions comparable to those contained herein, the intended oral or written publication containing Proprietary and Confidential Information of NeoRx or such information that is jointly developed by the parties. UABRF agrees that upon reasonable request of NeoRx, and to the extent reasonably necessary to protect NeoRx's patent or other legal rights, UABRF will delay from publishing material containing NeoRx Confidential and Proprietary Information.

ARTICLE VIII
PATENTS AND LITIGATION

8.1 "Inventions" shall mean all discoveries, concepts and ideas, whether patentable or not, which arise from or are directly related to Proprietary and Confidential Information or property, including but not limited to articles, processes, methods, formulas, systems and techniques, as well as improvements thereof and know-how related thereto.

8.2 Any Invention made in the performance of this Agreement and that relates to Technology or Product shall be subject to the following terms and conditions:

(a) Where the Invention is made solely by UABRF or by employees and/or contractors of UABRF, title to such Invention shall remain in UABRF, and NeoRx and UABRF agree to negotiate in good faith a license agreement whereby NeoRx would be granted an exclusive, world-wide, irrevocable license to make, have made, use, sell, have sold and sublicense such Invention for the longer of 1) the term of any patent that may issue thereon, or 2) a period of ten (10) years from the date of the Agreement. Such license agreement shall not conflict with and shall be subject to laws and regulations of, and agreements with, the United States Government and public and private funding organizations, including NIH guidelines;

(b) Where the Invention is made solely by employees or contractors of NeoRx, title to such Invention shall remain in NeoRx;

(c) Where the Invention is made jointly by employees or contractors of NeoRx and of UABRF ("Joint Invention"), title shall rest in both NeoRx and UABRF.

In the case of Inventions described in Section 8(a) only, UABRF has the option to prepare and file world-wide patent applications at its sole discretion. In the case of Inventions described in Section 8(b) only, NeoRx has the option to prepare and file world-wide patent applications at its sole discretion. In the case of Joint Inventions described in Section 8(c) only, NeoRx will prepare and file a United States patent application(s) for any Joint Invention. Preparation, filing, prosecution and maintenance of corresponding foreign patent applications will be at the sole discretion of NeoRx. UABRF shall cooperate in expediting preparation, filing and prosecution of such patent applications.

The respective costs of such patent filings will be borne by: UABRF wholly under Section 8(a); and NeoRx wholly under Sections 8(b) and 8(c).

As used herein, the terms "inventor," "Invention," "joint inventors" and "joint invention" are defined to be consistent with those definitions established and set forth in Title 35 U.S.C. and case law pertaining thereto.

8.3 If any patent application submitted by NeoRx matures into a Patent that claims a Product or a method of using a Product per se, UABRF shall notify NeoRx promptly in writing of any infringement of such Patent which becomes known to UABRF. NeoRx has no obligation to bring or prosecute any legal action against third parties for infringement of a Patent; however, NeoRx and

UABRF may mutually agree to pursue such legal action on terms to be negotiated in good faith by NeoRx and UABRF. In jurisdictions where NeoRx does not have standing to pursue legal action against third parties for infringement of a Patent, and if NeoRx desires to pursue such legal action, UABRF agrees that NeoRx may perfect such Patent rights in the name of UABRF.

ARTICLE IX
INDEMNIFICATION

9.1 NeoRx agrees to indemnify UABRF and hold it harmless from and against suits, claims and demands whatsoever for injuries to or death of any person, damage to or loss of property alleged to have arisen out of, in connection with, or incidental to NeoRx's performance of the terms of this Agreement. In respect of NeoRx's obligation to indemnify, NeoRx shall defend suits, claims and demands brought against UABRF. NeoRx's obligation to defend shall arise upon notification to NeoRx and/or UABRF of such claim.

9.2 In respect of NeoRx's obligations set forth in Section 9.1 above, NeoRx agrees to pay, liquidate, discharge and satisfy any and all judgments, awards or expenses which may be rendered against or incurred by UABRF, including, but not limited to, all costs of suit, reasonable attorneys' fees and reasonable expenses in connection therewith, except to the extent that such judgment, award or expense is attributable, in whole or in part, to the negligence of UABRF.

ARTICLE X
TERMINATION

10.1 This Agreement and the license granted in Article II shall have a term commencing on the effective date, unless terminated sooner in accordance with the provisions of this Agreement. Upon termination of the Agreement, all Proprietary and Confidential Information and materials in the possession of the receiving party shall be returned to the disclosing party, except that one copy of written information may be retained by the receiving party in a limited access file. If NeoRx does not file a Product License Application within five years of the effective date of the Agreement, and if this deadline is not extended by mutual agreement of the parties (see Section 3.1), the Agreement will terminate. Unless terminated sooner in accordance with the provisions of this Agreement, this Agreement shall remain in force for the longer of: (a) the last-to-expire Patent claiming a component or aspect of an FDA-approved Product, or (b) 10 years from the effective date of this Agreement.

10.2 UABRF may terminate this Agreement if NeoRx is in breach because of its failure to pay royalties or milestones due and owing

or its failure to submit a royalty report as prescribed herein. In such case, UABRF shall provide written notice to NeoRx of an alleged breach of this Agreement, and NeoRx shall have 30 days from receipt of the written notice to cure the breach. If the breach is not cured within such 30 day period, UABRF may give notice of termination of the Agreement. In addition to UABRF's right to terminate, both parties shall have all legal and equitable remedies available to enforce the terms and conditions of this Agreement.

10.3 NeoRx may terminate this Agreement if UABRF is in breach because of its failure to collaborate in the research and development of Product.

ARTICLE XI
GENERAL PROVISIONS

11.1 The interpretation and application of the provisions of this Agreement shall be governed by the laws of the state of Washington.

11.2 Notices required to be given under this Agreement shall be in writing and shall be effective only when delivered to the addressee by mail or by facsimile at the address stated below, or at such other address as either party may hereafter state by written notice:

If to NeoRx:

Jeffrey J. Miller, Ph.D., J.D.
Senior Vice President
Business Development and Legal Affairs
NeoRx Corporation
410 West Harrison Street
Seattle, Washington 98119
Telephone: (206) 281-7001, X518
Facsimile: (206) 284-7112

If to UABRF:

Dr. Kenneth J. Roozen
Executive Director - UAB Research Foundation
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010
Telephone: (205) 934-0622
Facsimile: (205) 934-1221

or such other address as either party may request in writing.

11.3 This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof or information relating thereto, and neither party shall be obligated by any condition, promise, or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

11.4 Nothing contained in this Agreement shall be construed as creating any partnership or joint venture between the parties. Neither party shall be authorized to act as agent for the other, nor shall either party enter into any agreement or contract on behalf of the other as representative or agent.

11.5 This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Neither NeoRx nor UABRF shall assign this Agreement without the other's prior written consent, which shall not be unreasonably withheld. Neither party shall be deemed unreasonable if it withholds approval because of its good faith concern regarding protection of its intellectual property rights by the prospective assignee.

11.6 No waiver or modification of any of the terms of this Agreement shall be effective unless in writing and signed by both parties. A waiver by either party of any right under this Agreement shall not be deemed a waiver by that party of the same or any other right or any subsequent occasion.

11.7 If any of the provisions of this Agreement are determined to be to any extent invalid or unenforceable, the invalidity and unenforceability of that provision shall not affect the validity and enforceability of the remaining provisions of this Agreement, and the affected provision shall be construed as if it were written so as to be valid and enforceable to the maximum possible extent.

11.8 Each party and the individuals executing this Agreement on that party's behalf, represents and warrants to the other party that it has obtained any and all necessary corporate authority to make and perform this Agreement. Each party further represents and warrants to the other that it is not precluded by the terms of any other agreement from making or performing this Agreement.

11.9 Any controversy or dispute arising out of or relating to this Agreement shall be submitted to binding arbitration, under the then existing Commercial Arbitration rules of the American Arbitration Association. Such decision may grant legal and equitable relief, including but not limited to injunction, and may grant any other form of relief appropriate. Judgment may be obtained on the arbitration award in any court having competent jurisdiction.

11.10 In the event that any arbitration or action should be commenced to enforce, or otherwise with respect to, any of the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the other, in addition to any and all other relief to which it may be entitled, all of the prevailing party's costs and expenses thereby incurred, including reasonable attorney fees relating to legal services provided in advance or connection with any such legal proceeding or any appeal thereof. The arbitrator or court shall determine which party has, under all the circumstances, "prevailed."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed individually or, where applicable, by its duly authorized representative.

NEORX CORPORATION

Jeffrey J. Miller, Ph.D., J.D.
Senior Vice President
Business Development and
Legal Affairs

THE UAB RESEARCH FOUNDATION

Dr. Kenneth J. Roozen
Executive Director

Feb 12 1993

NEORX

NeoRx Corporation
410 West Harrison
Seattle, WA 98119-4007
206-281-7001
Fax 206-284-7112

November 1, 1994

Peter G. Anderson, D.V.M., Ph.D.
406 Delcris Drive
Birmingham, Alabama 35226

RE: U.S. Patent Application Serial No. 08/062,451
THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS
Filed: May 13, 1993

Dear Dr. Anderson:

The enclosed Assignment will be filed in the U.S. Patent and Trademark Office in connection with the above-identified patent application. This application is a continuation-in-part (CIP) application of U.S. Serial No. 07/011,669, filed January 28, 1993, which is a CIP of international patent application PCT/US92/08220, filed September 25, 1992, which is a CIP of U.S. Serial No. 07/767,254, filed September 27, 1991.

Please sign and return the Assignment to me by Thursday, November 10, 1994. Thank you.

Sincerely,

Sue E. Lintott

Sue E. Lintott
Patent Paralegal

Enclosure

DEFENDANT'S EXHIBIT
Anderson 10
SAC 1.18.05

UAB01081

ASSIGNMENT

WHEREAS, we, Lawrence L. Kunz, Richard A. Klein, John M. Reno, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson (hereinafter referred to as ASSIGNORS), having post office addresses of 2310 223 Court, N.E., Redmond, Washington 98053; 6620 162nd place, S.W., Lynnwood, Washington 98037; 2452 Elm Drive, Brier, Washington 98036; Magdalene College, Cambridge, England CB3 OAG; 20 Luard Road, Cambridge, England CB2 2PJ; 116 Shelford Road, Cambridge, England CB2 2NF; and 406 Delcris Drive, Birmingham, Alabama 35226, respectively, are the joint inventors of an invention entitled "THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS", as described and claimed in the specification and claims forming part of an application for United States letters patent which was filed on May 13, 1993 and assigned U.S. Patent Application Serial No. 08/062,451, which application in part discloses and claims subject matter disclosed in U.S. Serial No. 08/011,669, filed January 28, 1993, which application in part discloses and claims subject matter disclosed in PCT/US92/08220, filed September 25, 1992, which application in part discloses and claims subject matter disclosed in U.S. Serial No. 07/767,254, filed September 27, 1991, and now abandoned; and

WHEREAS, NeoRx Corporation (hereinafter referred to as ASSIGNEE), a corporation of the State of Washington having a place of business at 410 West Harrison, Seattle, Washington 98119, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE the full and exclusive right, title and interest in and to said invention for the United States of America and its territorial possessions and all foreign countries, and the entire right, title and interest in and to any and all letters patent which may be granted therefor in the United States of America and its territorial possessions and in any and all foreign countries, and in any and all divisions, reissues and continuations thereof, including the right to claim

priority rights deriving from said United States application by virtue of the International Convention, said invention, application and all letters patent on such invention to be held and enjoyed by ASSIGNEE for its use and benefit and of its successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United States and foreign letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

OCT 19, 1994
Date

Lawrence L. Kunz

Nov. 1, 1994
Date

Richard A. Klein

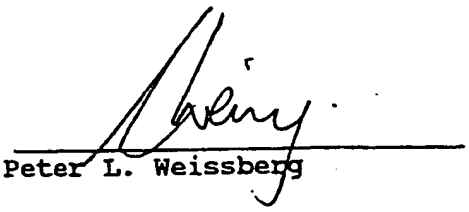
October 27, 1994
Date

John M. Reno

19/9/94
Date

David J. Grainger

UAB01083

9.9.94 Date	J C Metcalfe James C. Metcalfe
8.9.94. Date	 Peter L. Weissberg
11-7-94 Date	 Peter G. Anderson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

HIGHLY CONFIDENTIAL

BOSTON SCIENTIFIC SCIMED, INC., and BOSTON SCIENTIFIC CORPORATION,

Plaintiffs,

vs.

CORDIS CORPORATION and JOHNSON & JOHNSON, INC.,

Defendants.

Case No. 03-283-SLR

BOSTON SCIENTIFIC SCIMED, et al.,

Plaintiffs,

vs.

CORDIS, et al., and GUIDANT, et al.,

Defendants.

Case No. 03-1138-SLR

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF JOHN RENO, Ph.D.

Taken on behalf of the Defendant

February 11, 2005

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MR. JOHNSON: Thank you. And you should in general always feel the need to read whatever you want to put anything into context or anything you need to feel comfortable.

THE WITNESS: I'm sorry. What was your question?

BY MR. TIMMONS:

Q. There was no question. I was just asking you to read that paragraph, and when you're done with it I'll ask you some questions.

A. Okay. I've read it.

Q. Do you agree with the statement that taxol is an example of a cytoskeletal inhibitor?

MR. JOHNSON: Objection to form, mischaracterization.

THE WITNESS: If you define cytoskeletal inhibitor as it does as something that acts on microtubial and microfilament networks within a cell, I'd have to agree with that. But it's not classically what I would call an inhibitor.

BY MR. TIMMONS:

Q. What is your understanding of the definition of cytoskeletal inhibitor, classically like you said?

A. It's in quotes. It's got to be defined here within the specifications, so I really don't know.

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Q. Let's take you out of the specification. If somebody asked you what a cytoskeletal inhibitor was, what would your general definition be?

A. I'd have to -- I'm sorry. I'd have to ask for further clarification. I'm not really sure -- they would have to define what they mean by cytoskeletal. When I talk about microtubials and microfilaments, that's -- those are very temporary structures that are built within a cell and then dissolve. So they're not really a skeleton within the cell, at least the ones that I'm concerned about in terms of actually being involved in the motility of cells.

Now, I'm not -- I'm not a cell biologist, so I really don't understand or know very much detail about, quote, unquote, "the cytoskeleton of a cell."

Q. But your understanding is that microtubial and microfilaments aren't normally considered part of the cytoskeletal of a cell?

A. I believe they are to some extent. But the structures that I am more familiar about which relate to my work in the cardiovascular idea relate to the temporary structures that are built to allow the cell to move.

Some structures are also involved in cell division. You know, if you see those nice mitotic pictures pulling the DNA apart, those are also

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microtubials, microfilaments. I'm not really concerned about those. I don't know much about those.

Q. If you could turn back to the very first page of this patent, please. Do you see under "Related U.S. applications" that the application from which this issued was a continuation of serial number 62451 which was filed on May 13th, 1993? Do you remember see that?

A. Yes.

Q. Okay. Let me give you a document that was previously marked as Anderson Exhibit 10, a letter from Sue Lintott to a Peter Anderson attaching a -- an assignment of U.S. application serial number 0862451.

(Whereupon, Anderson Exhibit-10 was presented to the witness.)

And I know you probably haven't seen the first page before, but if you could turn to the two-page assignment or the three-page assignment that's attached to that letter.

And my question is whether or not that's your signature on the signature line dated October 27th, 1994?

A. Yeah, I think it is. It's changed, but --

Q. I'm sorry?

A. I said it's changed.

Q. Your signature's changed over the years?

A. Yes.

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Q. Did you assign your rights to the patents that you received when you were working at NeoRx to NeoRx?

MR. JOHNSON: Objection, calls for a legal conclusion. You may answer.

THE WITNESS: That was the policy. I was obligated to do that, and I was thrilled to do that.

BY MR. TIMMONS:

Q. And if you look at the left-hand column -- the left-hand page here, the first paragraph in the assignment, do you see at the bottom of the paragraph it lists a number of applications that were related to this application to which you were assigning?

A. Yes.

Q. And it goes on to list at the very bottom a application serial number 07 slash 767 comma 254 filed September 27th, 1991 and now abandoned. Do you see that?

A. Yes.

Q. Okay. And you signed this document in October 1994?

A. October 27th, 1994.

Q. Who was Sue Lintott?

A. I -- she was a -- well, it says patent paralegal. I looked at her more as a legal secretary. I guess she had some specialized training, but I don't recall.

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Q. Did she provide you with the documents to sign for submission to the patent office?
A. In general? I can't -- I can't comment on this one. But in general, yes, she would -- she would be one of the people.
Q. And you didn't draft this assignment; right?
A. Oh, no.
Q. And the drafting of the assignment was done by the legal department at NeoRx?
A. I have no idea.
Q. Who else provided you with documents to sign that were to be submitted to the patent office?
MR. JOHNSON: Objection.
MR. McBRAYER: Objection on privilege. And I'm going to instruct you not to answer to the extent your knowledge is based on a conversation with a NeoRx attorney who might have told you what was intended to be done with the documents, you are instructed not to answer. But if you have any independent knowledge, you can answer.
BY MR. TIMMONS:
Q. My question is who provided you with documents to sign that were submitted to the patent office?
A. In general anybody within the legal department would do that. More specifically I believe it was the -- the secretaries that typically do that.

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Q. Who was Debra Leith?
A. Debra Leith was a patent attorney at NeoRx.
Q. Did she ever provide you with documents that were to be submitted to the patent office?
A. She may have. I don't recall.
Q. Who was Anna Wight?
A. She was also a patent attorney at NeoRx.
Q. Did she ever provide you with documents like assignments or anything like that that were to be submitted to the patent office?
A. Same answer. May have.
Q. Did you ever work with any outside attorneys that represented the NeoRx company in conjunction with --
A. Yes.
Q. -- the patent office? Who did you work with?
A. I can't remember the names. I know there was -- I did quite a bit of that in the cancer area. I really don't recall specific names. I believe one of the attorneys was from Seed and Berry. That's about the extent of my memory.
Q. Okay. What I'd like to ask you to do is keep this document in front of you so you can look at the assignment. And I'd like to give you something that was previously marked as Anderson Exhibit 11. That's an assignment of again the 451 application, NeoRx 31432 through 31434. And it has a reel and frame number on it, reel 7375 and frame 925. And that was Anderson 11. Ask you if you've seen that document before.

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(Whereupon, Anderson Exhibit-11 was presented to the witness.)
A. It's not familiar to me.
Q. If you would look at the second page.
A. Yes.
Q. Is that your signature?
A. Boy, is this the same document?
Q. Let me --
A. It's -- my signature is identical. I would suspect that this is the identical document without looking further.
Q. Okay. So the signature dated October 27th, 1994 on Anderson 10 is the same as the signature that's dated October 27th, 1994 on Anderson 11; right?
MR. JOHNSON: Objection to form, calls for expert testimony.
THE WITNESS: They look identical to me.
BY MR. TIMMONS:
Q. Okay. If you would turn to the first page of Anderson 11, the very first paragraph again.
A. Yes.
Q. You see where at the bottom of that paragraph it lists a number of applications to which the 451 application is related to. Do you see that?

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A. Yes.
Q. Okay. And in this one there isn't any listing of the application serial numbers 07 slash 767 comma 254 which is filed September 27th, 1991, is there?
MR. JOHNSON: Objection to form.
THE WITNESS: That's correct.
BY MR. TIMMONS:
Q. Did you sign two different assignments on October 27th, 1994?
MR. JOHNSON: Objection to form.
THE WITNESS: I don't know.
BY MR. TIMMONS:
Q. Did anyone at the legal department change the first page of this assignment, do you know?
MR. McBRAYER: Objection.
MR. JOHNSON: Objection to form, calls for speculation.
MR. McBRAYER: Instructing the witness not to answer. If you -- Dr. Reno, if you have personal knowledge such that you may have seen such an act, you can answer the question. But to the extent it's based on any communication with anyone from the legal department, I'm instructing you not to answer.

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THE WITNESS: The answer is no.
BY MR. TIMMONS:
Q. So you don't know if the legal department changed the first page of this assignment?
A. That's correct.
Q. Okay. Did the legal department ever call you up and ask you for permission to remove a line from a document you had already signed?
MR. McBRAYER: Objection.
MR. JOHNSON: Objection to form.
MR. McBRAYER: And, Dr. Reno, I'm going to instruct you again not -- not to answer. And when I say you're not to answer, that means you're not to answer at all.
BY MR. TIMMONS:
Q. Do you have any explanation for why you have identical signatures on two documents that have different first pages?
MR. JOHNSON: Objection, mischaracterization.
THE WITNESS: No. Strange.
BY MR. TIMMONS:
Q. Do you know any reason why a reference to U.S. serial number 07 comma -- slash 767 comma 254 which was filed on September 27th, 1991 would have been removed from this assignment?

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MR. JOHNSON: Objection to form.
THE WITNESS: No.
BY MR. TIMMONS:
Q. You didn't remove that reference; right?
A. Absolutely not.
Q. If someone was going to remove a reference to a patent application from a document you had already assigned, would you have thought -- or would you have requested that they had asked your permission to do so?
MR. JOHNSON: Objection to form.
THE WITNESS: I don't recall anybody asking me to do anything. And I would have been -- I don't recall -- I just don't believe such a thing would have happened.
BY MR. TIMMONS:
Q. Do you have any other explanation for why these two assignments have identical signatures of yourself and there's a missing line from the very first paragraph of the assignment?
MR. JOHNSON: Objection to form, mischaracterizes his testimony.
THE WITNESS: I have no idea.
BY MR. TIMMONS:
Q. Let me put before you a document that was marked as Klein Exhibit 12. And that's the file history for

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application serial number 62451 and 450793 which eventually issued as the 447 patent.
(Whereupon, Klein Exhibit-12 was presented to the witness.)
I know it's a very large document, but I'm going to try to direct you to certain portions of it. Have you ever seen this file history in this format before?
A. No.
Q. I did tabs this time. So, sorry. I'll do my best. Probably the best thing for me to do is to hand you the pages from here rather than having to have you go through it.
And what I'm going to give you is the declaration and power of attorney from this application, the 451 application. If you'd like to you can dive through that and see if you can find it. But I'd like to ask you some questions about that declaration and power of attorney. If you don't mind, I could come over and find it for you if you like.
A. I'm not looking for it. I just want to get --
Q. Oh, fine. Sure.
A. -- familiar with this document. I just want to see a little bit -- I just don't recall seeing it before.
Q. And your counsel's right. Whatever you need to look at, you're welcome to look at. My only question

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about the declaration and power of attorney is, is that your signature on the third page?
A. Appears to be.
Q. Okay. And did you read the declaration and power of attorney before you signed it?
A. I don't recall.
Q. Would you have read such a document before you signed it? Would that be your normal practice?
A. Yes, it would be.
Q. Okay. What I'm going to ask you about is paper 15.
MR. JOHNSON: Thank you.
BY MR. TIMMONS:
Q. And I'm going to -- again, if you want to go through, that's fine. But I can give you the pages from the -- the document itself. I'd like to hand you the assignment that was -- that's in the file history for the 451 application, and ask you if that's your signature on the second page of that document again?
A. Yes, it is.
Q. Okay. And that assignment that was submitted to the patent office, the one from the file history, does not have a reference to the 1991 application; right?
MR. JOHNSON: Objection to form.
THE WITNESS: I'm sorry. What are you referring

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to again?
BY MR. TIMMONS:
Q. The end of the very first paragraph in the assignment, that doesn't refer to the 1991 application?
MR. JOHNSON: Objection to form.
THE WITNESS: No, I don't see it.
BY MR. TIMMONS:
Q. Let me have that one back. Mike, what I'm turning to is paper 22 from the 793 continuation off the 451. And what I'd like to do, Dr. Reno, is give you a copy of the amendment which was filed in a later application that was a continuation of the 451.
This amendment was filed on September 25th, 1995 in the patent office in application serial number 08450793. It's paper number 22 from the 793 application. And my question is whether or not you've ever seen that document before.
MR. JOHNSON: This is the one that was received October 16th?
MR. TIMMONS: Yes, yes. Paper 22.
MR. JOHNSON: Just looks like there's a E or something after it. I wasn't sure if there was more than one paper 22.
THE WITNESS: I don't believe I saw this before.
BY MR. TIMMONS:

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Q. The third page in there's claim number 35. Could you just take a look at that and read that to yourself.
(The witness reviews the exhibit.)
Do you see that?
A. Yes.
Q. And that talks about the use of taxol?
A. That's correct.
Q. And claim 44 is on the next page.
MR. JOHNSON: Just let him finish his questions.
BY MR. TIMMONS:
Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that?
MR. JOHNSON: Objection to form.
THE WITNESS: Yes.
BY MR. TIMMONS:
Q. If you keep that document in front of you, I'm going to give you another one. What I'm going to do now is I'm going to give you document 32 from the 793 application, paper 32. And that's petition to correct inventorship pursuant to 37 CFR 1.48B. And ask if you've ever seen that document before?
A. No, I have not.
Q. Do you see where you're being removed as a co-inventor from this patent application because claims 35

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through 38 and 44 through 47 were canceled?
MR. TIMMONS: Objection to form, mischaracterization.
THE WITNESS: Yes.
BY MR. TIMMONS:
Q. Yes?
A. I see that.
Q. Uh-huh. And going back to paper 22, you were the inventor on claims 35 through 38?
MR. JOHNSON: Objection, form, mischaracterization, calls for a legal conclusion.
THE WITNESS: Again, I don't -- I was never involved -- I don't -- I don't know about inventorship. I deferred that completely to the patent people.
BY MR. TIMMONS:
Q. And do you consider yourself the inventor of claim 44?
MR. JOHNSON: Same objections.
THE WITNESS: I can only give you the same answer.
BY MR. TIMMONS:
Q. Okay. But in any event, the representatives of NeoRx identified you as the inventor of claims 35 through 38 and 44 through 47 in paper 32; correct?
MR. JOHNSON: Objection to form,

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mischaracterization.
THE WITNESS: It said I was a co-inventor.
BY MR. TIMMONS:
Q. And they also asked that you be deleted as an inventor in the application; right?
A. I'm sorry. I'm lost. In what application?
Q. In the -- let me just read the sentence to you from paper 32. "This petition is submitted to request that the name of John M. Reno be deleted as an inventor in the above-identified application;" correct?
A. That's correct.
MR. JOHNSON: Do you want your individual papers back?
MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one.
MR. JOHNSON: This one. This is yours, but those two --
MR. TIMMONS: This one and that one. Thank you.
MR. JOHNSON: Are we -- can we put this aside or --
MR. TIMMONS: One second.
MR. JOHNSON: Sorry.
BY MR. TIMMONS:
Q. After all that, the application for which you were -- the attorneys were trying to delete you as an

ASSIGNMENT

WHEREAS, we, Lawrence L. Kunz, Richard A. Klein, John M. Reno, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson (hereinafter referred to as ASSIGNORS), having post office addresses of 2310 223 Court, N.E., Redmond, Washington 98053; 6620 162nd place, S.W., Lynnwood, Washington 98037; 2452 Elm Drive, Brier, Washington 98036; Magdalene College, Cambridge, England CB3 OAG; 20 Luard Road, Cambridge, England CB2 2PJ; 116 Shelford Road, Cambridge, England CB2 2NF; and 406 Delcris Drive, Birmingham, Alabama 35226, respectively, are the joint inventors of an invention entitled "THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS", as described and claimed in the specification and claims forming part of an application for United States letters patent which was filed on May 13, 1993 and assigned U.S. Patent Application Serial No. 08/062,451, which application in part discloses and claims subject matter disclosed in U.S. Serial No. 08/011,669, filed January 28, 1993, which application in part discloses and claims subject matter disclosed in PCT/US92/08220, filed September 25, 1992; and

WHEREAS, NeoRx Corporation (hereinafter referred to as ASSIGNEE), a corporation of the State of Washington having a place of business at 410 West Harrison, Seattle, Washington 98119, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE the full and exclusive right, title and interest in and to said invention for the United States of America and its territorial possessions and all foreign countries, and the entire right, title and interest in and to any and all letters patent which may be granted therefor in the United States of America and its territorial possessions and in any and all foreign countries, and in any and all divisions, reissues and continuations thereof, including the right to claim

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priority rights deriving from said United States application by virtue of the International Convention, said invention, application and all letters patent on such invention to be held and enjoyed by ASSIGNEE for its use and benefit and of its successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United States and foreign letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

OCT 18, 1994
Date

Lawrence L. Kunz

Nov. 1, 1994
Date

Richard A. Klein

October 27, 1994
Date

John M. Reno

10/9/94
Date

David J. Grainger

US Serial No. 08/062,451

1.9.94 Date	James C. Metcalfe
8.9.94 Date	Peter L. Weissberg
11-7-94 Date	Peter G. Anderson

130 - 122 - 1204

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	L.L. Kunz et al.	Examiner:	S. Barts
Serial No.:	08/450,793	Art Unit:	1204
Filed:	May 25, 1995	Docket No.:	295.003US1
For:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS		

PETITION TO CORRECT INVENTORSHIP PURSUANT TO 37 C.F.R. 51.48(b)

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

This petition is submitted to request that the names of Richard A. Klein, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson be deleted as inventors in the above-identified application. Claims were canceled in the Amendments filed July 26, 1995 and September 21, 1995, which were directed to particular embodiments of the invention of which Richard A. Klein, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson were co-inventors.

Thus, Richard A. Klein, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson are no longer inventors of the subject matter claimed in the above-identified application.

Respectfully submitted,

L.L. Kunz et al.,

By their attorneys,

SCHWEGMAN, LUNDBERG, WOESSNER
& KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 339-0331

Date: 21 May 1996
WDW:jee

By: Warren D. Woessner
Reg. No. 30,440

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231 on May 21, 1996.

MARC IRELAND
Name

Signature

12b 6/10/96 Barts 122 GP 204

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Lawrence L. Kunz et al.	Examiner: S. Barts	#32
Serial No.:	08/450,793	Group Art Unit: 1204	7/1/96
Filed:	May 25, 1995	Docket: 295.003US1	
Title:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS		

PETITION TO CORRECT INVENTORSHIP PURSUANT TO 37 C.F.R. §1.48(b)

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

This petition is submitted to request that the name of John M. Reno be deleted as an inventor in the above-identified application. In the Amendment which accompanies this Petition, claims 35-38 and 44-47 were canceled. The canceled claims are directed to particular embodiments of the invention of which John M. Reno was a co-inventor.

Thus, John M. Reno is no longer an inventor of the subject matter claimed in the above-identified application.

Respectfully submitted,

Lawrence L. Kunz et al.,

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 339-0331

Date 6/17/96 By _____
JEE/dlp
Janet E. Embretson
Reg. No. 39,665

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner of Patents, Washington, D.C. 20231 on June 17, 1996.

MARC IRELAND
Name

MARC IRELAND
Signature

240 PR 06/24/96 08450793
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 5,811,447 Docket: 295.003US1

Issue Date: September 22, 1998 Patentee: Lawrence L. Kunz

Title: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

#45

REQUEST FOR CERTIFICATE OF CORRECTION

Commissioner of Patents and Trademarks
Washington, D.C. 20231

It is requested that a Certificate of Correction be issued correcting printing errors appearing in the above-identified United States patent. Two copies of the text of the Certificate in the suggested form are enclosed.

Issuance of the Certificate of Correction would neither expand nor contract the scope of the claims as properly allowed, and re-examination is not required.

As the error is that of the Patent Office, it is believed that no fee is due.

The Examiner is authorized to charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

LAWRENCE L. KUNZ

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6959

Date January 27, 2000 By _____

Janet E. Embretson
Reg. No. 39,665
JEE:pww

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231 on January 27, 2000.

Phil Wheeler _____
Name Signature

(77293)

DETACH HERE BEFORE MAILING TWO COPIES OF THE CERTIFICATE TO THE PATENT OFFICE

Staple Here Only! PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.: 5,811,447

DATED: Sep. 22, 1998

INVENTOR(S) Kunz

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the front page, section [75], please delete all inventors except "Lawrence L. Kunz, Redmond, Wash."

In column 76, line 9, please delete "and for a period of time".

In column 76, line 11, please delete "while not eliminating their" and insert --, wherein the amount of said cytochalasin administered does not eliminate the-- therefor.

In column 76, line 11, please delete "ability to secrete" and insert --ability of vascular smooth muscle cells to secrete-- therefor.

In column 76, line 30-34, delete claim 9 in its entirety and insert --The method of claim 7 wherein the sustained release dosage form comprises microparticles or nanoparticles.-- therefor.

In column 76, lines 35-46, please delete claims 10, 11 and 12 in their entirety and insert

--10. A therapeutic method comprising:

(a) administering to a traumatized blood vessel of a mammal an amount of cytochalasin B or a cytochalasin that is a functional analog thereof effective to biologically stent said vessel; and

(b) administering an amount of a sustained release dosage form comprising an amount of a cytostatic agent effective to inhibit proliferation of the cells of said vessel in response to said trauma.

11. The method of claim 10 wherein the administration is local.

12. The method of claim 10 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof.-- therefor.

In column 61, Table 3, under column labeled "Time", please delete "Cell Pallets" and insert --Cell Pellets-- therefor.

MAILING ADDRESS OF SENDER:
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
Attn: Janet E. Embretson
P.O. Box 2938
Minneapolis, MN 55402

PATENT NO. 5,811,447

Docket No. 295.003US1

No. of addl copies @ 50¢ per page = 0

FORM 1050 (REV. 10-95)

77293)

DETACH HERE BEFORE MAILING TWO COPIES OF THE CERTIFICATE TO THE PATENT OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

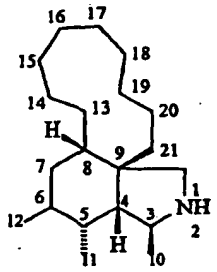
PATENT NO.: 5,811,447

DATED: Sep. 22, 1998

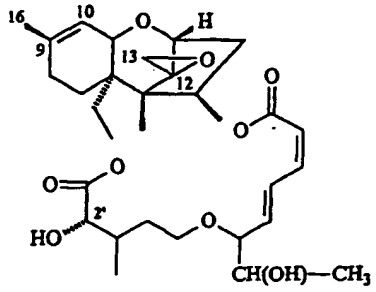
INVENTOR(S) Kunz

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In column 11, line 55 please insert –9– in the figure as indicated below:



In column 46, line 20, please insert –2'–in the figure as indicated below:



MAILING ADDRESS OF SENDER:
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
Attn: Janet E. Embretson
P.O. Box 2938
Minneapolis, MN 55402

PATENT NO. 5,811,447
Docket No. 295.003US1

No. of add'l copies @ 50¢ per page = 8

FORM 1595 (REV. 10-93)

C of C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Lawrence L. Kunz

Examiner: Samuel Barts

Patent No.: 5,811,447

Group Art Unit: 1621

Issue Date: September 22, 1998

Docket No.: 295.003US1

#45

Title: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

Commissioner of Patents and Trademarks
Washington, D.C. 20231

We are transmitting herewith the attached:

X Request for Certificate of Correction.
X Certificate of Correction Form - PTO-1050 (in duplicate)
X A return postcard.
- Other: ___.

Please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the papers as described above, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on this 31 day of January, 2000.

By: _____
Name: Janet E. Embretson
Reg. No. 39,665
JEE:CMG:pww

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938, Minneapolis, MN 55402 (612-373-6900)

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE
AND COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Date: AUG 15 2000

#47

Patent No: 5,811,447
Issued: September 22, 1998
Inventor: Lawrence L. Kunz, et al.
Title: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS
Docket No: 295.003US1

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction in the above-identified patent under the provision of Rule 1.322 or 1.323.

Respecting the alleged errors, the proposed corrections are not mistakes of (1) clerical nature, (2) typos and /or (3) minor character. The corrections also would require reexamination of proposed new claims. Applicant is advised that these changes must be made in a reissue application.

In view of the foregoing, your request is hereby denied.

A revised request will be favorably received.

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch. Any response(s) must be filed within a two-month period.

Bobbie B. Jones
Decisions & Certificates
of Correction Branch
(703) 305-8309

Schwegman, Lundberg, Woessner & Kluth, P.A.
Attn: Janet E. Embretson
P.O. Box 2938
Minneapolis, MN 55402

vj/NBC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No: 5,811,447 Docket: 295.003US1

Issue Date: September 22, 1998 Patentee: Lawrence L. Kunz

Title: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

RENEWED REQUEST FOR CERTIFICATE OF CORRECTION

Decisions and Certificates of Correction Branch
United States Patent and Trademark Office
Washington, D.C. 20231

Sir:

Two Certificates of Correction were requested for the above-identified patent, U.S. Patent No. 5,811,447, issued September 22, 1998, one mailed on January 27, 2000 and the other mailed on February 3, 2000 (a copy of each is enclosed herewith). In correspondence from the Decisions and Certificates of Correction Branch dated August 15, 2000, patentee's request for issuance of those Certificates of Correction was denied. This paper is filed to renew the request for issuance of both Certificates of Correction.

35 U.S.C. § 254 states that "[w]henever a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patents". Errors made by the Office may be corrected at the request of patentee or patentee's assignee. 37 C.F.R. § 1.322(a). 37 C.F.R. § 1.323 provides for the issuance of a certificate of correction "[w]henever a mistake of a clerical or typographical nature or of minor character which was not the fault of the Office, appears in a patent and a showing is made that such mistake occurred in good faith, the Commissioner may, upon payment of the fee set forth in 37 C.F.R. § 1.20(a), issue a certificate, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination".

U.S. Patent No. 5,811,447 issued from Serial No. 08/450,793, filed May 25, 1995, which is a continuation of Serial No. 08/062,451, filed May 13, 1993, abandoned, which is a continuation in part of Serial No. 08/011,669, filed January 28, 1993, abandoned. In the Request for Certificate of Correction filed on January 27, 2000 for the '447 patent, the following corrections were requested: (1) deletion of the names of all inventors except Lawrence L. Kunz

formula V), column 46, line 20 (insert "2" at the proper position in the disclosed trichothecene), and column 61, Table 3 (delete "Pallets" and insert "Pellets" therefor); and (3) corrections to claims 1 and 9-12.

With respect to (1), a Petition to Correct Inventorship was filed in Serial No. 08/450,793 on May 21, 1996, requesting that the inventorship of the '793 application be changed from the joint inventorship of Lawrence L. Kunz, Richard A. Klein, John M. Reno, David J. Grainger, James C. Metcalfe, Peter L. Weissberg, and Peter G. Anderson to the joint inventorship of Lawrence L. Kunz and John M. Reno (a copy of the date stamped postcard for papers filed on May 21, 1996, and papers filed on May 21, 1996 which include the Petition to Correct Inventorship, is enclosed herewith as Exhibit A). A second Petition to Correct Inventorship was filed in Serial No. 08/450,793 on June 17, 1996, requesting that the inventorship of the '793 application be changed from the joint inventorship of Lawrence L. Kunz and John M. Reno to the sole inventorship of Lawrence L. Kunz (a copy of the date stamped postcard for papers filed on June 17, 1996, and papers filed on June 17, 1996, is enclosed herewith as Exhibit B).

With respect to (2), page 19 of the specification filed on May 13, 1993 and accorded Serial No. 08/062,451 provides a chemical structure labeled "V" which has a position labeled "9". Position 9 is not labeled in structure V at column 11, line 55 of the '447 patent. Page 83 of the '451 specification shows a trichothecene with a position labeled "2", which position is not labeled in the trichothecene in column 46, line 20 of the '447 patent. Table 3 (page 111) of the '451 specification has a column denoted "Cell Pellets". However, the corresponding column in Table 3 of the '447 patent appears as "Cell Pallets". A copy of each of the pages of the '451 specification referred to above is enclosed herewith (Exhibits C-D).

With respect to (3), in the final Office Action dated May 3, 1995 for the '451 application, the Examiner indicated that claims 1-10, 12-13, 17-18, and 21-25 were pending, and that claims 12-13, 17-18 and 21-25 were directed to an independent or distinct invention from the originally claimed invention and so were withdrawn from consideration (Exhibit E is a copy of the Office Action dated May 3, 1995). On May 25, 1995, a Request for File Wrapper Continuation Application was filed, and the application was accorded Serial No. 08/450,793 (a

copy of the date stamped postcard, and papers filed on May 25, 2995, is enclosed herewith as Exhibit F). On July 26, 1995, Applicant filed an Amendment which canceled claims 1-10 and 21-25, and added new claims 26-41 (a total of 16 new claims) (a copy of the Amendment is enclosed as Exhibit G).

The first Office Action for the '793 application, dated July 25, 1995, indicates that the claims pending in the application were claims 12-13, 17-18 and 21-25 (a copy of the Office Action is attached hereto as Exhibit H). Thus, claims 26-41 in the Amendment mailed on July 26, 1995 were never entered by the Examiner.

On September 21, 1995, Applicant filed an Amendment in response to the Office Action dated July 25, 1995 which canceled claims 12-13, 17-18 and 21-25 (all the pending claims per the first Office Action) and added claims 26-47 (a total of 22 new claims) (a copy of the papers filed on September 21, 1995, and the corresponding date stamped postcard, is enclosed as Exhibit I). The Office Action mailed May 23, 1996 indicates that the pending claims were claims 26-47, and that claims 35-38 and claims 44-47 were withdrawn from consideration because they were directed to an invention that was independent or distinct from the invention originally claimed (Exhibit J is a copy of the Office Action). Specifically, the Examiner stated that claims 35-38 were distinct from claims 26-34 and 39-43 because claims 35-38 were drawn to the use of a compound, i.e., taxol, which was distinct from the use of cytochalasin B (claims 26-34 and 39-43) and that claims 44-47 were directed to the use of a genus of compounds, i.e., cytoskeletal inhibitors, administered at a particular time.

Please consider that in the Amendment filed on July 26, 1995, claims 35-37 were directed to a method of using taxol, claim 38 was directed to a method of using cytochalasin B, and claim 41 was directed to the use of cytoskeletal inhibitors. Given that claims directed to the use of cytochalasin B were deemed elected for prosecution on the merits and claims directed to the use of taxol or cytoskeletal inhibitors were deemed to be directed to a non-elected invention in the '793 application, the claims presented in the Amendment filed on July 26, 1995 were clearly not pending as of May 23, 1996. Thus, the claims which were under consideration by the Examiner were those in the Amendment filed on September 21, 1995, not those in the Amendment filed on July 26, 1995.

A Supplemental Amendment was filed on October 18, 1996 which included a copy of the claims Applicant considered as pending. The Supplemental Amendment also added new claims 48-51, resulting in a total of 26 claims, of which 18 were directed to the use of cytochalasin B (a copy of the Supplemental Amendment filed on October 18, 1998 is attached hereto as Exhibit K). If only the claims in the Amendment filed on July 26, 1995 had been entered and under consideration, only 12 claims would be directed to the use of cytochalasin B. If the claims in the Amendment filed on July 26, 1995 and the claims in the Supplemental Amendment filed on October 18, 1996 had been entered and under consideration, 16 claims would be directed to the use of cytochalasin B.

The Notice of Allowability dated February 3, 1997 indicates that the allowed claims were claims 26-34, 39-43 and 48-51 and that they were renumbered as claims 1-18 (a copy of the Notice of Allowability is attached hereto as Exhibit L), i.e., 18 claims were allowed. Thus, claims 26-34 and 39-43 (filed on September 21, 1995, including claims 32 and 33 as amended in an Amendment filed on December 14, 1995) and claims 48-51 (filed on October 18, 1996) were the claims which were allowed in Notice of Allowability mailed February 3, 1997, and which should correspond to claims 1-18 in the '447 patent. In particular claims 26, 34, 39, 40, and 41 in the '793 application should correspond to claims 1, 9, 10, 11, and 12, respectively, in the '447 patent.

However, claim 26, which was added in the Amendment filed on September 21, 1995 and not amended thereafter, does not recite the phrases "and for a period of time", "while not eliminating their" and "ability to secrete", phrases which appear in claim 1 of the '447 patent and which were recited in claim 26 in the Amendment filed on July 26, 1995. In contrast, claim 26 in the Amendment filed on September 21, 1995 recites "muscle cells, wherein the amount of said cytochalasin administered does not eliminate the ability of vascular smooth muscle cells to secrete extracellular matrix".

Claim 34, added in the Amendment filed on September 21, 1995 and not amended thereafter, recites "[t]he method of claim 32 wherein the sustained release dosage form comprises microparticles or nanoparticles". Claim 9 in the '447 patent recites "[a] therapeutic method comprising maintaining or expanding blood vessel luminal area by systemically administering to

a mammal an effective amount of cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B". Claim 9 in the '447 patent corresponds to claim 34 in the Amendment dated July 26, 1995 which was not entered.

Claims 39, 40 and 41 were added in the Amendment filed on September 21, 1995 and not amended thereafter. Claim 39 was directed to a "[a] therapeutic method comprising: (a) administering to a traumatized blood vessel of a mammal an amount of cytochalasin B or a cytochalasin that is a functional analog thereof effective to biologically stent said vessel; and (b) administering an amount of a sustained release dosage form comprising an amount of a cytostatic agent effective to inhibit proliferation of the cells of said vessel in response to said trauma". Claim 10 in the '447 patent recites "[t]he method of claim 9 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof" (corresponding to claim 39 in the Amendment filed on July 26, 1995). Claim 40 was directed to "[t]he method of claim 39 wherein the administration is local". Claim 11 in the '447 patent, recites "[t]he method of claim 10 wherein the sustained release formulation comprises microparticles or nanoparticles comprising said cytochalasin B or said functional analog thereof" (corresponding to claim 40 in the Amendment filed on July 26, 1995). Claim 41 was directed to "[t]he method of claim 39 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof", while claim 12 in the '447 patent recites "[a] method for biologically stenting a mammalian blood vessel, which method comprises administering to the blood vessel of a mammal a cytoskeletal inhibitor in an amount and for a period of time effective to inhibit the contraction or migration of the vascular smooth muscle cells" (corresponding to claim 41 in the Amendment filed on July 26, 1995).

Thus, claims 1 and 9-12 of the '447 patent as issued correspond to claims which were not entered by the Examiner in the '793 application.

The Request for Certificate of Correction filed on January 27, 2000 was intended to correct these errors. Based on the discussion above, it is respectfully submitted that the errors present in section 75, column 11, column 46, column 61, and claims 1 and 9-12 of the '477 patent are those of the Patent Office. Therefore, patentee respectfully submits that the Request for

Certificate of Correction filed on January 27, 2000 for the '447 patent should be granted and that no fee is due.

In the Request for Certificate of Correction filed on February 3, 2000, patentee requested corrections to claims 1 and 14. A fee pursuant to 37 C.F.R. § 1.20(a) accompanied the Request. With respect to claim 1, it was requested that the word "traumatized" be inserted after the phrase "biological stenting a". As mentioned above, claim 26 in the Amendment filed on September 21, 1995 should correspond to claim 1 in the '447 patent, and claim 26 was not amended after September 21, 1995. The word "traumatized" appears after the phrase "biologically stenting a" in claim 26 in the Amendment filed on September 21, 1995. Thus, it is respectfully submitted that the omission of the word "traumatized" in claim 1 in the '477 patent is the fault of the Patent Office.

With respect to claim 14, patentee requested that the term "formulation" be replaced with the term "form", that the first instance of "said" be deleted, and the phrase "said functional" be replaced with the phrase "a functional". The replacement of the term "form" for "formulation" provided proper antecedent basis for that term in claim 14 (allowed claim 43) which depends on claim 9 (allowed claim 34). Allowed claim 34 reads "[t]he method of claim 32 wherein the sustained release dosage form comprises microparticles or nanoparticles" (emphasis added).

Thus, the errors to be corrected in the Request for Certificate of Correction filed on February 3, 2000 were either those of the Patent Office or were of a clerical or typographical nature or of minor character, occurred in good faith and were accompanied by the fee as set forth in 37 C.F.R. § 1.20(a). Patentee's Representatives respectfully request that the Office grant the Request for Certificate of Correction filed on February 3, 2000.

Moreover, as none of the requested corrections in either Request for Certificate of Correction would expand or contract the scope of the claims as properly allowed, reexamination is not required. Therefore, it is urged that the Office grant the Requests for Certificate of Correction mailed on January 27, 2000 and February 3, 2000 for the '447 patent.

Respectfully submitted,

LAWRENCE L. KUNZ,

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6959

Date October 11, 2000 By /Janet E. Embretson/
Janet E. Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 11 day of October, 2000.

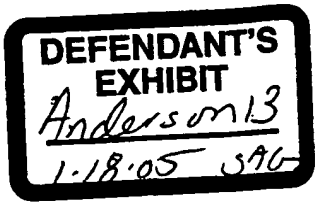
Frances Esbion
Name

Frances Esbion
Signature

FAX TRANSMISSION SHEET

January 30, 2003

TO: Janet Embretson, PhD, Esq.



ORGANIZATION:

FAX #: 612-339-3061 PHONE #:

You should receive 4 pages, including this cover sheet

COMMENTS:

Janet:

I have read over the materials you sent me.

Regarding the claims on European Patent Application No. 94916743.1: I agree that I had no input into these claims and I agree to be removed form the patent.

Regarding the claims of "Therapeutic Inhibitor of vascular smooth muscle cells (US Patent # 5,811,447): Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct involvement and scientific expertise.

I have noted the areas of these claims where my direct input was instrumental in developing these claims. I am a cardiovascular pathologist with many years of experience in this area. The NeoRx investigators were NOT familiar with this area and they depended upon me to provide this input.

Peter G. Anderson, D.V.M., Ph.D.
Professor and Director of Pathology Undergraduate Education
Department of Pathology, G-046 VH
University of Alabama at Birmingham
1670 University Boulevard
Birmingham, Alabama 35294-0019

Phone # (205) 934-2414
Fax # (205) 975-5697
E-mail: pga@uab.edu

Docket No. 295.003US1 NRX 00068 JCO

ISSUED CLAIMS

Serial Number 08/450,793
U.S. Patent No. 5,811,447

1. A method for biologically stenting a mammalian blood vessel, which method comprises:
administering to the blood vessel of a mammal cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B in an amount and for a period of time effective to inhibit the contraction of vascular smooth muscle cells while not eliminating their ability to secrete extracellular matrix. PGA

2. The method of claim 1 wherein the vessel is subjected to angioplasty. PGA

3. The method of claim 1 wherein the cytochalasin is infused to achieve a concentration of about 10^{-9} to 10^{-12} M.

4. The method of claim 1 wherein the cytochalasin is locally administered in one or more doses.

5. The method of claim 4 wherein the cytochalasin is administered by catheter.

6. The method of claim 1 wherein the cytochalasin is administered in solution.

7. The method of claim 1 further comprising the administration of a cytostatic agent in a sustained release dosage form.

8. The method of claim 7 wherein the cytostatic agent is effective to inhibit cellular proliferation subsequent to stenting. PGA

9. A therapeutic method comprising maintaining or expanding blood vessel luminal area by systemically administering to a mammal an effective amount of cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B.

10. The method of claim 9 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof.

11. The method of claim 10 wherein the sustained release formulation comprises microparticles or nanoparticles comprising said cytochalasin B or said functional analog thereof.

12. A method for biologically stenting a mammalian blood vessel, which method comprises administering to the blood vessel of a mammal a cytoskeletal inhibitor in an amount and for a period of time effective to inhibit the contraction or migration of the vascular smooth muscle cells.

13. The method of claim 10 wherein the cytostatic agent comprises taxol or a structural analog thereof.

14. The method of claim 10 wherein the sustained release formulation comprises microparticles or nanoparticles comprising said cytochalasin B or said functional analog thereof.

15. The method of claim 1 wherein the administration of cytochalasin B or a functional analog thereof is before, during or after the trauma.

16. The method of claim 10 wherein the administration of cytochalasin B or a functional analog thereof is before, during or after the trauma.

17. The method of claim 16 wherein the administration of cytochalasin B or a functional analog thereof and the administration of the cytostatic agent is simultaneous.

18. The method of claim 10 wherein the administration of the cytostatic agent is before or after the trauma.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOSTON SCIENTIFIC SCIMED, INC. and
BOSTON SCIENTIFIC CORPORATION,

C.A. No 03-283-SLR

Plaintiffs,

-vs-

CORDIS CORPORATION and
JOHNSON & JOHNSON, INC.,

Defendants.

BOSTON SCIENTIFIC SCIMED, INC. and
BOSTON SCIENTIFIC CORPORATION,

C.A. No. 03-1138-SLR

Plaintiffs,

-vs-

CORDIS CORPORATION; JOHNSON &
JOHNSON, INC.; GUIDANT CORPORATION;
GUIDANT SALES CORPORATION and ADVANCED
CARDIOVASCULAR SYSTEMS, INC.,

Defendants.

The Videotaped Deposition of JANET EMBRETSON, JD, PhD, taken pursuant to Notice of Taking Deposition, taken before Christine K. Herman, RPR, a Notary Public in and for the County of Anoka, State of Minnesota, taken on the 12th day of January, 2005, at 1600 TCF Tower, 121 South Eighth Street, Minneapolis, Minnesota, commencing at approximately 9:44 a.m.

Q Thank you. And do you see there it says, describes that March patent from Indiana University as having broad claims?
A That's what the slide says.
Q And under that it says, virtually all classes of drugs?
A That's what it says.
Q Have you ever heard that NeoRx was making claims that the March '217 patent possessed broad claims and covered virtually all classes of drugs?
A No. I was not aware of that.
Q Did you ever disclose to the patent office that NeoRx had a license under the '217 patent?
A Not to my knowledge.
Q Do you know whether NeoRx ever told the patent office that it thought the March '217 patent possessed broad claims to virtually all classes of drugs to prevent restenosis?
MR. MELORO: Objection, lack of foundation.
A I don't know what they did do separate from what we would be aware of during our representation.
Q (BY MR. JACKSON) Can you turn back to Exhibit 5, please, which is the '009 patent?
A Did you say -- Oh. Exhibit 5 or 9? Sorry.
Q Exhibit 5.

A Okay.
Q Do you have that in front of you?
A I do.
Q If you can look just at -- under the related U.S. application data on the front page again.
A Yes.
Q And at the bottom it says that the application is -- I'm sorry -- the patent is a continuation in part of application number 07/767,254; is that correct?
A That's what it says.
MR. JACKSON: I'd like to mark as -- application number 07/767,254 as Exhibit 12.
EXHIBITS:
(Deposition Exhibit No. 12 marked for identification.)
MR. JACKSON: Actually, if we can go off the record for just a moment. I just need to find my copy.
VIDEO TECHNICIAN: Going off the video record at 2:08.
(Whereupon, a short recess was taken.)
VIDEO TECHNICIAN: We're back on the record at 2:08.
MR. MELORO: Mr. Jackson, is Exhibit 12 an

accurate copy of the prosecution file for this application?
MR. JACKSON: I understand it to be so. Do you see anything that's --
MR. MELORO: There's nothing behind tab 12 in my copy. I don't know if the original exhibit is that way or not.
MR. JACKSON: I don't have a tab 12 either, and I don't have my original copy, so I couldn't tell you.
MR. MELORO: Is tab 12 blank in the original exhibit as well?
THE WITNESS: Yes, it is.
MR. JACKSON: I won't be referring to tab 12 or whatever was there.
MR. AL-SALAM: That's good.
MR. JACKSON: If that's any consolation.
MR. AL-SALAM: I would clearly object if you referred to the substance of tab 12.
MR. JACKSON: If there's no objection, I'm just going to be referring to what's behind tab 1.
MR. AL-SALAM: This is referring to that. We're off the record still, right?
THE COURT REPORTER: No.
MR. AL-SALAM: That's fine.

Q (BY MR. JACKSON) If you can just turn to tab 1, please.
A What's behind tab 1, correct? Not what's in front of tab 1.
Q Yes. If you can just turn the page. Just review that page for a moment.
A This page.
Q Yes.
A (Witness reviewing document.)
Q Do you see the serial number?
A Yes.
Q Is that the '254 application, the serial number that's referred to on the '009 patent, Exhibit 5?
A The numbers are identical, yes.
Q And do you see that Lawrence Kunz and Peter Anderson are listed as inventors?
A As applicants, yes.
Q As applicants. I'm sorry. Do you have an understanding from reviewing this page what law firm was prosecuting this application?
A Yes.
Q What firm is that?
A Christensen, O'Connor, Johnson & Kindness.
Q Have you ever communicated with that firm?

A Not to my memory, no.
MR. JACKSON: I'll ask that the reporter mark as Exhibit 13 a document Bates numbered UAB01108 through UAB01111.
EXHIBITS:
(Deposition Exhibit No. 13 marked for identification.)
Q (BY MR. JACKSON) Take a moment to review that.
A The entire document?
Q No. Just the first page.
A (Witness reviewing document.)
Q Do you recognize this document?
A I do.
Q What is it?
A It is a letter sent to me via facsimile from Dr. Peter Anderson that has enclosures with it.
Q Can you describe the enclosures?
A It is a claim set, as issued in U.S. Patent No. 5,811,447, and there is underlining, stars, checks, initials, PGA with regard to certain portions of certain claims.
Q If you can turn back to the first page of the document. Do you see where it says, I have read over the materials that you've sent me?

A Yes.
Q Do you recall what materials you sent to Dr. Anderson?
A I believe I sent this claim set and the claim set in the European patent application No. 94916743.1, and I likely also sent documents to be executed that required his signature to effect an inventorship change.
Q And did he sign those documents?
A No. Not to my knowledge. He didn't return them with a signature.
Q If you go to the second -- I'm sorry -- the third paragraph beginning regarding the claims of therapeutic inhibitor. Do you see why where he states, Some of the primary claims are the direct result of my input?
A Yes, I see that.
Q And, This claim would not have been possible without my direct involvement and scientific expertise?
A Yes. That's what it says.
Q Was Dr. Anderson named, ever named as an inventor under U.S. Patent '447 as a result of this letter?
A To the best of my recollection, Dr. Anderson

was on the application, from the beginning was named as an inventor, and if I recall, the patent issued with his name on it.
Q Did you communicate with Dr. Anderson subsequent to this letter?
A No, I did not.
Q Why haven't you communicated with him?
MR. MELORO: Objection to form.
A I was not asked to do so.
Q (BY MR. JACKSON) If you can turn to the page ending UAB -- or numbered, rather, UAB01110. Under claim 10, do you have an understanding of what Dr. Anderson is indicating there?
MR. AL-SALAM: Object to the form of the question.
A One would guess that Dr. Anderson was indicating that he contributed to the use of a cytostatic agent.
Q (BY MR. JACKSON) And if you turn -- I'm sorry. If you go down to paragraph 12, do you see there there's some underlining and a check and initials PGA?
A Yes.
Q And do you have an understanding of what is being indicated there?

MR. AL-SALAM: Same objection.
A I would guess it would be the same, that Dr. Anderson believed that he contributed to the use of an agent that inhibits contraction or migration of vascular smooth muscle cells. And I don't even know if I'd go to the agent, but an effect, the effect is what he helped contribute to.
Q If you can turn back to Exhibit 5. It's the '009 patent. Is Dr. Anderson listed as an inventor on the '009 patent?
A He's not listed on the front of the '009 patent.
Q Can you explain why he's not listed as an inventor of the '009 patent?
MR. AL-SALAM: Objection, vague.
A He was not considered to be an inventor of the claims that issued.
Q (BY MR. JACKSON) And why is that?
A An analysis was done to determine who were the inventors on those claims.
Q Who conducted that analysis?
A Multiple individuals were involved at different times, so it would be myself, Warren Woessner and Anna Lewak Wight.
Q When you were -- or your firm was

NEORX

NeoRx Corporation
410 West Harrison
Seattle, WA 98119-4007
206-281-7001
Fax 206-284-7112

September 25, 1996

Date 1-27-05 Exhibit # 6
Case Boston v Curtis
Deponent Anna Wight
Reporter KATHLEEN KNOWLTON
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

Dr. Peter Anderson
University of Alabama at Birmingham
Department of Pathology, Volker Hall GO23
UAB Station
Birmingham, AL 35294

Re: U.S. Patent Application Serial Number: 08/406,921
NeoRx # 00068 IUS

Dear Pete:

It was a pleasure talking to you Friday afternoon. I am sending you the patent application and claims we discussed on which you are being added as an inventor. Please let me know if you have any comments or questions.

I look forward to seeing you on your next trip to Seattle.

Best regards,

Anna Lewak Wight
Senior Intellectual Property Counsel

krb

NEORX

NeoRx Corporation
410 West Harrison
Seattle, WA 98119-4007
206-281-7001
Fax 206-284-7112

December 3, 1996

Dr. Peter Anderson
University of Alabama at Birmingham
Volker Hall G023
UAB Station
Birmingham, Alabama 35294

IN RE: USSN 08/406,921 (NeoRx File: NRX 00068 IUS)
USSN 08/389,712 (NeoRx File: NRX 00068 HCP)
Therapeutic Inhibitor of Vascular Smooth Muscle Cells

Dear Dr. Anderson:

It was a pleasure talking with you yesterday. Thank you for your cooperation in signing and returning the Petitions.

As we discussed, I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor.

Again, thank you for your cooperation.

Best regards,

Anna Lewak Wight
Director, Intellectual Property

/tc

Enc.

Date 1-6-05 Exhibit # 17
Case CONAS v. Boston
Deponent L. Kunz
Reporter TIA REIDT
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

SERIAL/APPLICATION NO.: US 08/406,921 ..... NRX 00068 IUS SLW 295.001US2	
TITLE:	Therapeutic Inhibitor of Vascular Smooth Muscle Cells
INVENTORS:	Lawrence L. Kunz
FILED:	3/23/93 (in US); priority date 9/25/92
LINEAGE:	National filing of PCT/US92/08220 (68 BPC), filed 9/25/92 from which priority claimed
STATUS:	Pending
EXAMINER (GROUP):	Unknown

FIELD OF THE INVENTION

This invention relates generally to therapeutic methods involving surgical or intravenous introduction of binding partners directed to certain target cell populations such as smooth muscle proteins, cancer cells and effector cells of the immune system, particularly for treating conditions such as stenosis following vascular trauma or disease, cancer and diseases that are mediated by immune system effector cells.

ABSTRACT OF THE DISCLOSURE

Methods are provided for inhibiting stenosis following vascular trauma or disease in a mammalian host, comprising administering to the host a therapeutically effective dosage of a therapeutic conjugate containing a vascular smooth muscle binding protein that associates in a specific manner with a cell surface of the vascular smooth muscle cell, coupled to a therapeutic agent that inhibits a cellular activity of the muscle cell

CLAIMS AS AMENDED (As of October 18, 1995) [1]

1. A method for inhibiting vascular smooth muscle cells of a mammal for a period of time to achieve a therapeutic objective, which method comprises administering to the mammal a dosage form comprising an amount of therapeutic agent effective to inhibit vascular smooth muscle cell activity without substantially killing the cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

2. A method of claim 1 wherein the administering step is accomplished with a catheter.

3. A method of claim 1 wherein the administering step is accomplished with an infusion needle.

4. A method of claim 1 wherein the binding protein specifically associated with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.

5. A method of claim 1 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.

6. A method of claim 1 wherein the therapeutic agent is a protein kinase inhibitor or an analog thereof.

7. A method of claim 1 wherein the therapeutic agent is suramin or an analog thereof.

8. A method of claim 1 wherein the therapeutic agent is staurosporin or an analog thereof.

9. A method of claim 1 wherein the therapeutic agent is nitroglycerin or an analog thereof.

10. A method of claim 22 wherein the dosage form exhibits a particulate structure comprising microparticles, nanoparticles or a mixture thereof.

11. A method of claim 22 wherein the dosage form is biodegradable.

12. A method of claim 22 wherein the sustained time period for release of the therapeutic agent ranges from about 3 to about 21 days.

13. A method of claim 22 wherein the sustained time period for release of the therapeutic agent ranges from about 10 to about 21 days.

14. A method of claim 1 wherein the therapeutic objective is the reduction of restenosis following angioplasty.

15. A method of claim 1 wherein the activity being inhibited is selected from the group consisting essentially of DNA synthesis and migration of vascular smooth muscle cells.

16. A method of claim 1 wherein the therapeutic agent exerts a cytostatic effect on vascular smooth muscle cells.

17. A method for treating a mammalian cancer that is accessible to local administration of a dosage form by achieving a cytotoxic effect on cancer target cells substantially without

impacting non-target cells, which method comprises locally administering to the mammal a dosage form comprising an effective amount of therapeutic agent effective in killing target cancer cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to an epitope associated with target cancer cells, and wherein the therapeutic agent is selected from the group consisting of Roridin A and *Pseudomonas exotoxin* or analogs thereof.

Claim 18 canceled.

19. A method for treating a mammalian immune system-mediated disease characterized by an effector cell population that is accessible to local administration of a dosage form by achieving a metabolism modulating effect on target effector cells, which method comprises locally administering to the mammal a dosage form comprising an amount of therapeutic agent effective in achieving a metabolism modulating effect on target effector cells with or without substantially killing the cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to an epitope associated with target effector cells, and wherein the therapeutic agent is selected from the group consisting of Roridin A and *Pseudomonas exotoxin*, suramin, staurosporin or analogs thereof.

Claim 20 canceled.

21. The method of claim 1 wherein the therapeutic agent is a cytoskeletal inhibitor.

22. The method of claim 1 wherein the dosage form is a sustained release dosage form.

23. The method of claim 4 wherein the binding protein is monoclonal antibody NR-AN-01.

24. The method of claim 10 wherein the particulate structure comprises a polymer derived from the condensation of alpha-hydroxycarboxylic acids and related lactones.

25. The method of claim 24 wherein the polymer is selected from the group consisting of a polylactide, a polyglycolide, and a copolymer of lactide and glycolide subunits.

26. The method of claim 25 wherein the polymer is poly (lactide coglycolide).

27. The method of claim 17 wherein the dosage form is a sustained release dosage form.

28. The method of claim 19 wherein the dosage form is a sustained release dosage form.

29. The method of claim 22 wherein the therapeutic agent is a cytoskeletal inhibitor.

ORIGINALLY FILED CLAIMS

1. A method for inhibiting vascular smooth muscle cells of a mammal substantially without killing the cells for a sustained period of time to achieve a therapeutic objective, which method comprises administering to the mammal a sustained release dosage form having dispersed therein an effective amount of therapeutic agent capable of inhibiting vascular smooth muscle cell activity without killing the cells, and the dosage form being bound to a binding peptide or protein capable of specifically localizing to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

2. A method of claim 1 wherein the administering step is accomplished with a catheter.

3. A method of claim 1 wherein the administering step is accomplished with an infusion needle.

4. A method of claim 1 wherein the binding protein specifically associated with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.

5. A method of claim 1 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.

6. A method of claim 1 wherein the therapeutic agent is a protein kinase inhibitor or an analog thereof.

7. A method of claim 1 wherein the therapeutic agent is suramin or an analog thereof.

8. A method of claim 1 wherein the therapeutic agent is staurosporin or an analog thereof.

9. A method of claim 1 wherein the therapeutic agent is nitroglycerin or an analog thereof.

10. A method of claim 1 wherein the dosage form exhibits a particulate structure comprising microparticles, nanoparticles or a mixture thereof.

11. A method of claim 1 wherein the dosage form is biodegradable.

12. A method of claim 1 wherein the sustained time period for release of the therapeutic agent ranges from about 3 to about 21 days.

13. A method of claim 1 wherein the sustained time period for release of the therapeutic agent ranges from about 10 to about 21 days.

14. A method of claim 1 wherein the therapeutic objective is the reduction of restenosis following angioplasty.

15. A method of claim 1 wherein the activity being inhibited is selected from the group consisting essentially of DNA synthesis and migration of vascular smooth muscle cells.

16. A method of claim 1 wherein the therapeutic agent exerts a cytostatic effect on vascular smooth muscle cells.

17. A method for treating a mammalian cancer that is accessible to local administration of a dosage form by achieving a cytotoxic effect for a sustained period of time on cancer target cells substantially without impacting non-target cells, which method comprises administering to the mammal a sustained release dosage form having dispersed therein an effective amount of therapeutic agent capable of killing target cancer cells, and the dosage form being bound to a binding peptide or protein capable of specifically localizing to an epitope associated with target cancer cells.

18. A method of claim 17 wherein the therapeutic agent is selected from the group comprising Roridin A and *Pseudomonas exotoxin* or analogs thereof.

19. A method for treating a mammalian immune system-mediated disease characterized by an effector cell population that is accessible to local administration of a dosage form by achieving a metabolism modulating effect for a sustained period of time on target effector cells substantially without killing the cells, which method comprises administering to the mammal a sustained release dosage form having dispersed therein an effective amount of therapeutic agent capable of achieving a metabolism modulating effect on target effector cells with or without killing the cells, and the dosage form being bound to a binding peptide or protein capable of specifically localizing to an epitope associated with target effector cells.

20. A method of claim 19 wherein the therapeutic agent is selected from the group comprising Roridin A and *Pseudomonas exotoxin*, suramin, staurosporin or analogs thereof.

SERIAL/APPLICATION NO.: US 08/389,712 ..... NRX 00068 HCP SLW 295.007US1	
TITLE:	Therapeutic Inhibitor of Vascular Smooth Muscle Cells
INVENTORS:	Lawrence L. Kunz, Richard A. Klein
FILED:	2/15/95
LINEAGE:	This application claims priority from USSN 08/011,669 (68 CCP), filed 1/28/93, which is a CIP of PCT/US92/08220 (68 EPC), filed 9/25/92.
STATUS:	Pending
EXAMINER (GROUP):	Samuel Barts (Group 1200)

FIELD OF THE INVENTION:

This invention relates generally to therapeutic methods involving surgical or intravenous introduction of binding partners directed to certain target cell populations, such as smooth muscle cells, cancer cells, somatic cells requiring modulation to ameliorate a disease state and effector cells of the immune system, particularly for treating conditions such as stenosis following vascular trauma or disease, cancer, diseases resulting from hyperactivity or hyperplasia of somatic cells and diseases that are mediated by immune system effector cells. Surgical or intravenous introduction of active agents capable of altering the proliferation or migration or contraction of smooth muscle proteins is also described. The invention also relates to the direct or targeted delivery of therapeutic agents to vascular smooth muscle cells that results in dilation and fixation of the vascular lumen (biological stenting effect). Combined administration of a cytocidal conjugate and a sustained release dosage form of a vascular smooth muscle cell inhibitor is also disclosed.

ABSTRACT OF THE DISCLOSURE:

Methods are provided for inhibiting stenosis following vascular trauma or disease in a mammalian host, comprising administering to the host a therapeutically effective dosage of a therapeutic conjugate containing a vascular smooth muscle binding protein that associates in a specific manner with a cell surface of the vascular smooth muscle cell, coupled to a therapeutic agent dosage form that inhibits a cellular activity of the muscle cell. Methods are also provided for the direct and/or targeted delivery of therapeutic agents to vascular smooth muscle cells that cause a dilation and fixation of the vascular lumen by inhibiting smooth muscle cell contraction, thereby constituting a biological stent.

CLAIMS AS AMENDED (As of September 23, 1996):

1. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to a mammal a sustained release dosage form comprising a cytostatic amount of a therapeutic agent which does not exhibit substantial cytotoxicity.

2. The method of Claim 1 wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

3. The method of Claim 1 wherein the administering step is accomplished with a catheter.

4. The method of Claim 2 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cells.

5. The method of Claim 1 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.

6. The method of Claim 1 wherein the therapeutic agent comprises a cytochalasin or a cytochalasin analog.

7. The method of Claim 1 wherein the sustained release dosage form comprises biodegradable microparticles, biodegradable nanoparticles or a mixture thereof.

8. The method of Claim 1 wherein the therapeutic agent is released over a period of time from about 3 to about 21 days.

9. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to the vessel a cytostatic amount of a therapeutic agent which does not exhibit substantial cytotoxicity, wherein the therapeutic agent is administered directly or indirectly to a traumatized vessel, and wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.

10. The method of Claim 9 wherein the administering step is accomplished with a catheter.

11. The method of Claim 9 wherein the therapeutic agent is a cytoskeletal inhibitor.

12. The method of Claim 9 wherein the therapeutic agent comprises a cytochalasin or a cytochalasin analog.

13. The method of Claim 9 further comprising the step of subsequently administrating a sustained release dosage form comprising an effective amount of a cytostatic therapeutic agent that inhibits the contraction or migration of smooth muscle cells.

14. The method of Claim 13 wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to smooth muscle cells, stromal cells or interstitial matrix surrounding smooth muscle cells.

15. (Twice amended) A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises administering to a mammal the following:

(a) a therapeutic formulation comprising a cytocidal agent and a binding protein or peptide capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells; and

(b) a sustained release dosage form comprising an effective amount of a cytostatic therapeutic agent which does not exhibit substantial cytotoxicity.

16. The method of Claim 15 wherein the cytocidal agent comprises a toxin or toxin subunit and the cytostatic therapeutic agent is a cytoskeletal inhibitor.

17. The method of Claim 15 wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or the interstitial matrix surrounding vascular smooth muscle cells.

Claim 18 canceled.

19. The method of Claim 1 wherein the cytostatic therapeutic agent comprises taxol or an analog thereof.

Claims 20-27 canceled.

28. A method for inhibiting vascular smooth muscle cells of a mammal, which method comprises administering to the mammal a dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit vascular smooth muscle cell activity without substantial cytotoxicity to the cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells, or interstitial matrix surrounding vascular smooth muscle cells.

29. The method of Claim 28 wherein the administering step is accomplished with a catheter.

30. The method of Claim 28 wherein the administering step is accomplished with an infusion needle.

31. The method of Claim 28 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.

32. The method of Claim 31 wherein the binding protein comprises monoclonal antibody NR-AN-01.

33. The method of Claim 28 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.

34. The method of Claim 28 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.

35. The method of Claim 28 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

36. The method of Claim 28 wherein the dosage form comprises a sustained release dosage form.

37. The method of Claim 36 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.

38. The method of Claim 36 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

39. The method of Claim 36 wherein the dosage form exhibits a particulate structure comprising microparticles, nanoparticles or a mixture thereof.

40. The method of Claim 39 wherein the cytoskeletal inhibitor comprises cytochalasin B or a cytochalasin that is an analog thereof.

41. The method of Claim 39 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

42. The method of Claim 39 wherein the particulate structure comprises a polymer derived from the condensation of alpha-hydroxycarboxylic acids and related lactones.

43. The method of Claim 42 wherein the polymer is selected from the group consisting of a polylactide, a polyglycolide, and a copolymer of lactide and glycolide subunits.

44. The method of Claim 43 wherein the polymer is poly(lactide co-glycolide).

45. The method of Claim 36 wherein the dosage form is biodegradable.

46. The method of Claim 36 wherein the therapeutic agent is released over a period from about 3 to about 21 days.

47. The method of Claim 36 wherein the therapeutic agent is released over a period from about 10 to about 21 days.

48. The method of Claim 28 wherein the administration reduces restenosis following angioplasty.

49. The method of Claim 48 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.

50. The method of Claim 48 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

51. The method of Claim 28 wherein the activity being inhibited is selected from the group consisting of contraction and migration of vascular smooth muscle cells.

52. The method of Claim 28 wherein the activity being inhibited is selected from the group consisting of microfilament synthesis, assembly and disassembly in vascular smooth muscle cells.

53. The method of Claim 28 wherein the activity being inhibited is selected from the group consisting of microtubule synthesis, assembly and disassembly in vascular smooth muscle cells.

54. A method for inhibiting vascular smooth muscle cells of a mammal for a sustained period of time to achieve a therapeutic objective, which method comprises administering to the mammal a sustained release dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit vascular smooth muscle cell activity without substantial cytotoxicity to he cells.

55. The method of Claim 54 wherein the administering step is accomplished with a catheter.

56. The method of Claim 54 wherein the administering step is accomplished with an infusion needle.

57. The method of Claim 54 wherein the dosage form comprises a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells, or interstitial matrix surrounding vascular smooth muscle cells.

58. The method of Claim 57 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.

59. The method of Claim 58 wherein the binding protein comprises monoclonal antibody NR-AN-01.

60. The method of Claim 57 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.

61. The method of Claim 54 wherein the cytoskeletal inhibitor exerts a cytostatic effect on vascular smooth muscle cells.

62. The method of Claim 54 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.

63. The method of Claim 54 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

64. The method of Claim 54 wherein the dosage form comprises microparticles, nanoparticles or a mixture thereof.

65. The method of Claim 64 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.

66. The method of Claim 64 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

67. The method of Claim 64 wherein the particulate structure comprises a polymer derived from the condensation of alpha-hydroxycarboxylic acids and related lactones.

68. The method of Claim 67 wherein the polymer is selected from the group consisting of a polylactide, a polyglycolide, and a copolymer of lactide and glycolide subunits.

69. The method of Claim 68 wherein the polymer is poly(lactide co-glycolide).

70. The method of Claim 54 wherein the dosage form is biodegradable.

71. The method of Claim 54 wherein the therapeutic agent is released over a period from about 3 to about 21 days.

72. The method of Claim 54 wherein the therapeutic agent is released over a period from about 10 to about 21 days.

73. The method of Claim 54 wherein the therapeutic objective is the reduction of restenosis following angioplasty.

74. The method of Claim 73 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.

75. The method of Claim 73 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

76. A method of Claim 54 wherein the activity being inhibited is selected from the group consisting of a contraction and migration of vascular smooth muscle cells.

77. The method of Claim 54 wherein the activity being inhibited is selected from the group consisting of microfilament synthesis, assembly and disassembly in vascular smooth muscle cells.

78. The method of Claim 54 wherein the activity being inhibited is selected from the group consisting of microtubule synthesis, assembly and disassembly in vascular smooth muscle cells.

79. A method for treating a traumatized vessel, which method comprises:
administering to a mammal a sustained release dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit the contraction or migration of smooth muscle cells.

80. The method of Claim 79 wherein the sustained release dosage form comprises a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

81. The method of Claim 80 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cells.

82. The method of Claim 79 wherein the administering steps is accomplished with a catheter.

83. The method of Claim 79 wherein the vessel is traumatized by angioplasty.

84. The method of Claim 79 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

85. The method of Claim 79 wherein the cytoskeletal inhibitor comprises a cytochalasin or a cytochalasin analog.

86. The method of Claim 79 wherein the sustained release dosage form comprises biodegradable microparticles, biodegradable nanoparticles or a mixture thereof.

87. The method of Claim 79 wherein the administration is over about 3 to about 21 days.

88. The method of Claim 79 comprising the administration of a series of doses of the therapeutic agent.

89. A method for biological arteromyectomy, which method comprises administering to a mammal the following:

a cytocidal conjugate comprising a cytocidal agent and a binding partner capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells; and a sustained release dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit the contraction or migration of smooth muscle cells.

90. The method of Claim 89 wherein the cytocidal agent comprises a toxin or toxin subunit.

91. The method of Claim 89 wherein the sustained release dosage form comprises a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or the interstitial matrix surrounding vascular smooth muscle cells.

92. The method of Claim 89 wherein the cytoskeletal inhibitor comprises a cytochalasin or a cytochalasin analog.

93. The method of Claim 89 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.

94. The method of claim 9 wherein the therapeutic agent comprises taxol or an analog thereof.

95. The method of Claim 15 wherein the cytocidal agent and the binding protein or peptide are linked.

96. The method of claim 6, 12 or 97 wherein the cytochalasin comprises cytochalasin B.

97. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to a mammal a sustained release dosage form comprising an effective amount of a cytostatic therapeutic agent which does not exhibit substantial cytotoxicity, wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to vascular

smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

98. The method of claim 97 wherein the cytostatic agent is a cytoskeletal inhibitor or an analog thereof.

99. The method of claim 97 wherein the cytostatic agent is taxol or an analog thereof.

100. The method of claim 97 wherein the cytostatic agent is a cytochalasin or an analog thereof.

101. The method of claim 1, 9, 15 or 97 wherein the administration of the therapeutic agent is before, during or after the vascular trauma.

102. The method of claim 1, 9, or 97 wherein the administering step is accomplished by a means other than a catheter.

ORIGINALLY FILED CLAIMS:

1. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to a mammal a sustained release dosage form having dispersed therein an effective amount of a therapeutic agent that inhibits the contraction or migration of smooth muscle cells.

2. The method of Claim 1 wherein the sustained release dosage form is coated with a covalently attached binding peptide or protein capable of specifically localizing to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

3. The method of Claim 1 wherein the administering step is accomplished with a catheter.

4. The method of Claim 2 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cells.

5. The method of Claim 1 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.

6. The method of Claim 1 wherein the therapeutic agent is cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B.

7. The method of Claim 1 wherein the sustained release dosage form is a biodegradable microparticle, biodegradable nanoparticle or a mixture thereof.

8. The method of Claim 1 wherein the period of time ranges from about 3 to about 21 days.

9. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to the vessel an effective amount of a therapeutic agent that inhibits the contraction of [sic] migration of smooth muscle cells, wherein the therapeutic agent is administered directly or indirectly to a traumatized vessel.

10. The method of Claim 9 wherein the administering step is accomplished with a catheter.

11. The method of Claim 9 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.

12. The method of Claim 9 wherein the therapeutic agent is cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B.

13. The method of Claim 9 further comprising the step of subsequently administrating a sustained release dosage form having dispersed therein an effective amount of a therapeutic agent that inhibits the contraction or migration of smooth muscle cells.

14. The method of Claim 13 wherein the sustained release dosage form is coated with a covalently attached binding peptide or protein capable of specifically localizing to smooth muscle cells, stromal cells or interstitial matrix surrounding smooth muscle cells.

15. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises administering to a mammal the following:

a cytocidal conjugate comprising a cytocidal agent and a binding partner capable of specifically localizing to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells; and

a sustained release dosage form having dispersed therein an effective amount of a therapeutic agent that inhibits the contraction of [sic] migration of smooth muscle cells.

16. The method of Claim 15 wherein the cytocidal agent comprises a toxin or toxin subunit and the therapeutic agent is a cytoskeletal inhibitor.

17. The method of claim 15 wherein the sustained release dosage form is coated with a covalently attached binding peptide or protein capable of specifically localizing to vascular smooth muscle cells, stromal cells or the interstitial matrix surrounding vascular smooth muscle cells.

18. The method of claim 13 wherein the administering step is accomplished by inserting into said vessel an intravascular stent comprising a biodegradable coating or porous non-

biodegradable coating having releasably dispersed therein the sustained release dosage form.

19. The method of claim 18 wherein the intravascular stent is metallic.

20. The method of claim 18 wherein the intravascular stent consists essentially of a biodegradable material.

21. The method of claim 20 wherein the biodegradable material has releasably dispersed therein the sustained release dosage form.

22. The method of claim 9, wherein the vessel is a vascular graft, comprising following the surgical excision or isolation of the graft vessel, distending the graft vessel with an infusion of a therapeutic agent in an amount effective to cause an increase in the luminal area following engraftment of the graft.

23. The method of claim 22 wherein the infusion is accomplished by pressure infusion at of from about 0.2 to 1 atmospheres for a time period of about 2-4 minutes.

24. The method of claim 22 wherein the therapeutic agent utilized is cytochalasin B, or a functional analogue thereof.

25. The method of claim 24 wherein the amount of therapeutic agent administered is sufficient to inhibit stenosis.

S/N 08/389,712 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Lawrence L. Kunz et al.	Examiner: S. Barts
Serial No.:	08/389,712	Group Art Unit: 1204
Filed:	February 15, 1995	Docket: 295.007US1
Title:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	

PETITION TO CORRECT INVENTORSHIP PURSUANT TO 37 C.F.R. § 1.48(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

We, Lawrence L. Kunz and Richard A. Klein declare that we are the named inventors of the above-identified patent application, U.S. patent application Serial No. 08/389,712, filed February 15, 1995, and make this petition pursuant to 37 C.F.R. §1.48(a), to correct the inventorship from the joint inventorship of Lawrence L. Kunz and Richard A. Klein to the joint inventorship of Lawrence L. Kunz and John M. Reno.

The above-identified application is a continuation in part of U.S. application Serial No. 08/011,669, filed January 28, 1993, now abandoned, which is a continuation in part of international application No. PCT/US92/08220, filed September 25, [illegible]. Lawrence L. Kunz and Richard A. Klein are the named inventors in U.S. application [illegible] No. 08/011,669.

In early February 1995, at the time the papers were being prepared to file the above-identified application, NeoRx Corporation's outside patent counsel, NeoRx Corporation being the owner upon assignment of the application, was under the impression that the inventorship of the subject matter claimed in the above-identified application was the same as that of the parent application, i.e., U.S. application Serial No. 08/011,669.

In early 1996, the complete record of the parent application of the above-identified application was reviewed by the Senior Intellectual Property Counsel of NeoRx Corporation. Immediately subsequent to the review, the Senior Intellectual Property Counsel of NeoRx Corporation and outside patent counsel conducted a legal and factual analysis to determine whether the named inventors were the actual inventors of the subject matter claimed in the above-identified application.

In April 1996, the Senior Intellectual Property Counsel of NeoRx Corporation and outside patent counsel concluded that claims directed to a particular embodiment of the invention, of which Richard A. Klein was a co-inventor, were never presented in the above-identified application. Therefore, Richard A. Klein was erroneously, without deceptive intention, included as a named inventor in the above-identified application.

Moreover, in February 1997, the legal representatives of NeoRx Corporation and outside patent counsel concluded that the above-identified application was amended, in the Preliminary Amendment filed October 30, 1995, to include claims which were directed to a particular embodiment of the invention, the use of a particular agent (taxol) in the methods of the invention, of which John M. Reno was a co-inventor. Thus, John M. Reno was erroneously, without deceptive intention, omitted as a named inventor in the above-identified application.

It is respectfully submitted that the correct inventors were not named in the present application through error and inadvertent oversight. Furthermore, this error was made without deceptive intention on the part of the actual inventors. Therefore, correction of the inventorship of the present application is appropriate under 37 C.F.R. §1.48(a), and is earnestly solicited.

We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Dated 4/15/97 Lawrence E. Kunz

Dated 4/21/97 Richard A. Klein

S/N 08/389,712 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Lawrence L. Kunz et al.	Examiner: S. Barts
Serial No.:	08/389,712	Group Art Unit: 1204
Filed:	February 15, 1995	Docket: 295.007US1
Title:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	

CONSENT OF ASSIGNEE TO CORRECTION OF INVENTORSHIP

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

NeoRx Corporation, 410 West Harrison, Seattle, Washington 98119-4007, being the sole owner of the above-identified application, as evidenced by the Assignment enclosed herewith executed by Lawrence L. Kunz and John M. Reno, hereby consents to the change of inventorship in the above-identified application from the joint inventorship of Lawrence L. Kunz and Richard A. Klein to the joint inventorship of Lawrence L. Kunz and John M. Reno.

I declare that I am an official of the Assignee who is empowered to authorize this consent.

By: Lawrence L. Kunz

Date: April 23, 1997 Title: Director of Intellectual Property

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Lawrence L. Kunz et al.	Examiner: S. Barts
Serial No.:	08/389,712	Group Art Unit: 1204
Filed:	February 15, 1995	Docket: 295.007US1
Title:	THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS	

CERTIFICATE UNDER 37 CFR §3.73(b)

Assistant Commissioner for Patents
Washington, D.C. 20231

NeoRx Corporation hereby certifies that it is the assignee of the entire right, title, and interest in the patent application identified above by virtue of an assignment from the inventors for which a copy thereof is attached.

I have reviewed all the documents in the chain of title of the patent application identified above and, to the best of my knowledge and belief, title is in the assignee identified above.

I am empowered to sign this certificate on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

NeoRx Corporation

April 23, 1997
Date

Anna Lewak Wight
Name: Anna Lewak Wight
Title: Director of Intellectual Property

ASSIGNMENT

WHEREAS, WE, Lawrence L. Kunz, residing at 2310 - 223rd Court, N.E., Redmond, WA 98053, and John M. Reno, residing at 2452 Elm Drive, Brier, WA 98036, made certain new and useful inventions and improvements for which We filed an application for Letters Patent of the United States on February 15, 1995, which application is assigned U.S. serial number 08/389,712, and is entitled THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS.

AND WHEREAS, NeoRx Corporation, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having an office and place of business at 410 West Harrison, Seattle, WA 98119, (hereinafter "Assignee") is desirous of acquiring the entire right, title and interest in and to said inventions, improvements and application and in and to the Letters Patent to be obtained therefor;

NOW, THEREFORE, to all whom it may concern, be it known that for good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, we have sold, assigned, and transferred, and by these presents do sell, assign and transfer unto said Assignee, its successors or assigns, the entire right, title and interest for all countries in and to all inventions and improvements disclosed in the aforesaid application, and in and to the said application, all divisions, continuations, or renewals thereof, all Letters Patent which may be granted therefrom, and all reissues or extensions of such patents, and in and to any and all applications which have been or shall be filed in any foreign countries for Letters Patent on the said inventions and improvements, including an assignment of all rights under the provisions of the International Convention, and all Letters Patent of foreign countries which may be granted therefrom; and we do hereby authorize and request the Commissioner of Patents and Trademarks to issue any and all United States Letters Patent for the aforesaid inventions and improvements to the said Assignee as the assignee of the entire right, title and interest in and to the same, for the use of the said Assignee, its successors and assigns.

AND, for the consideration aforesaid, we do hereby agree that we and our executors and legal representatives will make, execute and deliver any and all other instruments in writing including any and all further application papers, affidavits, assignments and other documents, and will communicate to said Assignee, its successors and representatives all facts known to us relating to said improvements and the history thereof and will testify in all legal proceedings and generally do all things which may be necessary or desirable more effectually to secure to and vest in said Assignee, its successors or assigns the entire right, title and interest in and to the said improvements, inventions, applications, Letters Patent, rights, titles, benefits, privileges and advantages hereby sold, assigned and conveyed, or intended so to be.

AND, furthermore we covenant and agree with said Assignee, its successors and assigns, that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been made to others by me/us and that full right to convey the same as herein expressed is possessed by us.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 15 day of April, 1997.

Lawrence L. Kunz

STATE OF Washington
)ss.
COUNTY OF King)

On this 15 day of April, 1997 before me personally appeared Lawrence L. Kunz to me known and known to me to be the person described in and who executed the foregoing instrument, and he/she duly acknowledged to me that he/she executed the same for the uses and purposes therein set forth.

[SEAL]

Notary Public

IN TESTIMONY WHEREOF, I have hereunto set my hand this 21 day of April, 1997.

John M. Reno

STATE OF Washington
)ss.
COUNTY OF King)

On this 21 day of April, 1997 before me personally appeared John M. Reno to me known and known to me to be the person described in and who executed the foregoing instrument, and he/she duly acknowledged to me that he/she executed the same for the uses and purposes therein set forth.

[SEAL]

Notary Public

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS .

The specification of which was filed on February 15, 1995 as application serial no. 08/389,712 and was amended on April 13, 1995, May 25, 1995, October 30, 1995, March 27, 1996, and September 23, 1996.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, §119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

No such applications have been filed.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

No such applications have been filed.

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

Application Number	Filing Date	Status
PCT/US92/08220	September 25, 1992	Completed
08/011,669	January 28, 1993	Abandoned

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael	Reg. No. 24,916	Embretson, Janet E.	Reg. No. 39,665	Litman, Mark A.	Reg. No. 26,390
Bianchi, Timothy E.	Reg. No. 39,610	Fogg, David N.	Reg. No. 35,138	Lundberg, Steven W.	Reg. No. 30,568
Billig, Patrick G.	Reg. No. 38,080	Forrest, Bradley A.	Reg. No. 30,837	Sandberg, Victoria A.	Reg. No. P-41,287
Billion, Richard E.	Reg. No. 32,836	Harris, Robert J.	Reg. No. 37,346	Schwegman, Micheal L.	Reg. No. 25,816
Brennan, Thomas F.	Reg. No. 35,075	Holloway, Sheryl S.	Reg. No. 37,850	Slifer, Russell D.	Reg. No. 39,838
Clark, Barbara J.	Reg. No. 38,107	Klima-Silberg, Catherine I.	Reg. No. 40,052	Viksnins, Ann S.	Reg. No. 37,748
Donahue, Kimberly S.	Reg. No. P-40,998	Kluth, Daniel J.	Reg. No. 32,146	Woessner, Warren D.	Reg. No. 30,440
Dryja, Michael A.	Reg. No. 39,662	Lemaire, Charles A.	Reg. No. 36,198		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)339-0331

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : Lawrence L. Kunz
Citizenship: United States of America Residence: Redmond, WA
Post Office Address: 2310 - 223rd Court, N.E.
Redmond, WA 98053

Signature: _____ Date: 4/15/97
Lawrence L. Kunz

Full Name of joint inventor number 2 : John M. Reno
Citizenship: United States of America Residence: Brier, WA
Post Office Address: 2452 Elm Drive
Brier, WA 98036

Signature: _____ Date: 4/21/97
John M. Reno

Full Name of inventor:
Citizenship: Residence:
Post Office Address:

Signature: _____ Date: _____

Full Name of inventor:
Citizenship: Residence:
Post Office Address:

Signature: _____ Date: _____

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application:

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.